A **SITI NUR AIN SULAIMAN v. MAJLIS UGAMA ISLAM DAN ADAT RESAM MELAYU PAHANG & ANOR**

COURT OF APPEAL, PUTRAJAYA
CHE MOHD RUZIMA GHAZALI JCA
WONG KIAN KHEONG JCA
B AZHAHARI KAMAL RAMLI JCA
[CIVIL APPEAL NO: C-01(NCVC)(A)-118-03-2023]
29 SEPTEMBER 2025
[2025] CLJ (JT13)

C **Abstract** – *While every person has the right to profess and practise the religion of his choice, it is not within the jurisdiction of the civil court to interfere with the jurisdiction of the Syariah Court and civil court would respect the powers and jurisdiction of the Syariah Court under the State List of the Ninth Schedule of the Federal Constitution. Hence, the civil*
D *court, having determined that the present matter raised, ie, renunciation, fell within the exclusive jurisdiction of the Syariah Court, would not proceed to adjudicate the matter.*

E ***CONSTITUTIONAL LAW:*** *Courts – Civil and Syariah courts – Jurisdiction – Plaintiff of indigenous Jakun tribe – Determination of interpretation of 'persons professing the religion of Islam' – Whether question of fact to be proven by plaintiff who sought declaration – Whether plaintiff's conversion corroborated by entry in Daftar Rekod Muallaf Negeri Pahang – Plaintiff raised by convert mother alone –*
F *Whether plaintiff's mother entitled to convert plaintiff even without custody order – Whether matter related to renunciation – Whether fell under jurisdiction of Syariah Court – Administration of Islamic Law Enactment 1991 (Pahang) (En 3/1991), ss. 2, 2(1)(b), (d) & 103 – Federal Constitution, art. 12(4)*

G ***CONSTITUTIONAL LAW:*** *Jurisdiction – Civil court – Plaintiff of indigenous Jakun tribe – Determination of interpretation of 'persons professing the religion of Islam' – Whether question of fact to be proven by plaintiff who sought declaration – Whether plaintiff's conversion corroborated by entry in Daftar Rekod Muallaf Negeri Pahang – Plaintiff raised by convert mother alone – Whether plaintiff's mother entitled to convert plaintiff even without custody order – Whether matter related to renunciation – Whether fell under jurisdiction of Syariah Court –*
H *Administration of Islamic Law Enactment 1991 (Pahang) (En 3/1991), ss. 2, 2(1)(b), (d) & 103 – Federal Constitution, art. 12(4)*

This was an appeal by the appellant ('plaintiff') against the decision of the High Court in dismissing her application, *inter alia*, for declarations that
I (i) she was not a person professing the religion of Islam; (ii) the word 'parents' in para. (b) in the definition of 'Muslim' in s. 2 of the Administration of Islamic Law Enactment 1991 (Pahang) (En 3/1991) ('Enactment') only referred to the parents of a legitimate child; and (iii) the plaintiff had the right to practise and profess her own spiritual and cultural

beliefs as an aboriginal person from the Jakun tribe without any interference from the respondents ('defendants'). The plaintiff was born out of wedlock to an indigenous person of Jakun tribe. At the time of the plaintiff's birth, her mother was practicing the customs and spiritual belief of the Jakun tribe whilst her biological father was a Muslim. Both of the plaintiff's mother and father were never married and the plaintiff was not issued with a birth certificate. The plaintiff's mother embraced Islam when the plaintiff was two years old and had been issued with a certificate of conversion to Islam by the first defendant. The plaintiff's mother claimed that, at that material time, she did not decide nor consented to the plaintiff's conversion to Islam. It was the plaintiff's case that she never practiced Islam but instead, practiced the customs and spiritual beliefs of the Jakun. In dismissing the plaintiff's application, the High Court Judge ('HCJ') held, *inter alia*, that (i) pursuant to ss. 2(d) and s. 103 of the Enactment, supported by a fatwa issued by the State of Pahang, the plaintiff was an underaged child at the time of the conversion of the mother and, therefore, she was a person professing Islam as she automatically followed the religion of the parent who converted to Islam; (ii) s. 103 of the Enactment was applicable despite there was no custody order in place stating that the section includes a situation where the parents has been taking care of a child since the child was born; (iii) there was no contravention of art. 12(4) of the Federal Constitution ('FC') because the plaintiff's mother had consented for the plaintiff to be converted to Islam, as evident by the fact that the plaintiff was given a Muslim name and was included in the mother's conversion card; (iv) the issue of consent from either parent was not relevant to the plaintiff's case as, at the time of her birth, the father was a Muslim while her mother had converted to Islam when the plaintiff was two years old; (v) the plaintiff had failed to prove that she was raised according to the practice and spiritual belief of an indigenous person; and (vi) the plaintiff's application was one of a renunciation case, a matter that fell under the jurisdiction of the Syariah Court. In this appeal, which revolved around the question of whether or not the plaintiff was a person professing the religion of Islam, the determinative issue was whether, based on the facts of the case, the civil court had the jurisdiction to determine the status of the plaintiff's religion.

Held (dismissing appeal with no order as to costs)
Per Azhahari Kamal Ramli JCA delivering the judgment of the court:

(1) The point of contention between both the plaintiff and the defendants was on the interpretation of the phrase 'persons professing the religion of Islam', a question of fact to be proved by the person who seeks such declaration. The fact that the plaintiff's mother had converted to Islam together with the plaintiff was corroborated by the entry in the Daftar Rekod Muallaf Negeri Pahang Tahun 1996/1999. The particulars in the record were consistent with s. 103 of the Enactment and must be given the force of law. In this respect, the plaintiff's contention that she had

never declared the Syahadah was irrelevant. Further, the plaintiff was in her mother's custody and was raised by her mother alone. There was no application for the custody of the plaintiff by her biological father. There was also no evidence that the plaintiff's mother had converted out of Islam. (paras 21, 25, 28, 31, 36 & 42)

(2) A literal interpretation of s. 103 of the Enactment permits a Muslim convert who has a child (in all probability a child with his/her non-Muslim spouse) and a custody order is given to him (or her), to decide whether to convert his (or her) child to Islam. However, a Muslim convert mother of a child who is under 18 years old, but no order for custody was obtained, is prohibited from converting the said child to Islam even though the said child is in her custody at all times since she was born. It was never the intention of the drafters of the Enactment to discriminate the rights of Muslim convert mother to also convert her children who are under the age of 18 under any circumstances. Hence, applying the common-sense construction rule, the plaintiff's mother was entitled to convert the plaintiff at the time of her conversion to Islam even without a custody order. Hence, in this case, the plaintiff was a Muslim pursuant to s. 102 of the Enactment. (paras 38 & 39)

(3) The status of the religion of the plaintiff that appeared on her identity card was conclusive proof of what was stated thereon and hence, this was a case of 'no longer a Muslim' (renunciation case). (para 50)

(4) The plaintiff's father was a Muslim and hence, the issue of her father's consent, as raised by the plaintiff, was not relevant. Further, the word 'parent' referred to lawfully wedded parent. This was a case of an illegitimate child and the religion of a child under the age of 18 should be decided by her mother. Hence, s. 103 of the Enactment could not be said to be inconsistent with art. 12(4) of the FC. Further, the decision in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals ('Indira Gandhi')* on the need of the consent of both parents was not applicable as the case had no retrospective effect. Further, the HCJ had relied on s. 2(1)(d) (read with s. 103) of the Enactment and hence, the plaintiff's reference to s. 2(1)(b) was incorrect. It followed that the reference to art. 12(4) of the FC by the plaintiff was misconceived. (paras 51-58)

(5) The civil court would not interfere with and would respect the powers and jurisdiction of the Syariah Court under the State List of the Ninth Schedule of the FC. Once the issue of jurisdiction is determined, the plaintiff was at liberty to present her case, in the exercise of her constitutional right. This appeal fell under the category of a renunciation case and therefore, the proper forum with the necessary jurisdiction to adjudicate on the matter was the Syariah Court. There was no appealable error committed by the High Court. (paras 63 & 64)

Per Wong Kian Kheong JCA (dissenting)

(1) Premised on the decisions in *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* ('*Rosliza*') and *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* ('*Dahlia Dhaima*'), only the civil courts (not the Syariah Courts) have exclusive jurisdiction under art. 121(1) of the FC to decide on the constitutional law question. The HCJ had committed an error of law in: (i) not applying *Rosliza*; and (ii) not deciding that only the civil courts (not the Syariah Courts), can determine the constitutional law question. (paras 102 & 103)

(2) The Pahang State Fatwa could not apply retrospectively to decide on the constitutional law question, namely, whether the plaintiff was a Muslim from the date of her birth. Based on *Rosliza*, the plaintiff had the legal and evidential burden under ss. 101(1), (2) and 102 of the Evidence Act 1950 to prove, on a balance of probabilities, that she was not a Muslim *ab initio*. Further, art. 4(1) of the FC provides for the supremacy of the FC and thereby, the Pahang State Fatwa could not oust the civil court's exclusive jurisdiction to decide on the constitutional law question. (paras 104, 106 & 109)

(3) Based on *Indira Gandhi* and *Rosliza*, by virtue of art. 12(4) of the FC, only both parents of a child can convert their child. According to art. 4(1) of the FC, any 'law passed after Merdeka Day which is inconsistent with [the FC] shall, to the extent of the inconsistency, be void'. The term 'law' is defined in art. 160(2) of the FC as including 'written law', which includes the FC and the Constitution of any State. Paragraph (b) of the definition of the term 'orang Islam' (Muslim) in s. 2 of the Enactment is similar to the definition of 'Muslim' in s. 2(b) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (En 1/2003). Hence, premised on the judgment in *Rosliza*, the defendants could not rely on the definition of the term 'orang Islam' (Muslim) in s. 2(1)(b) of the Enactment to resist this appeal. (paras 115, 116 & 120)

(4) Section 103 of the Enactment only applies if the civil court grants a custody order of a child in favour of a 'muallaf'. In this case, the civil court has not granted to the plaintiff's mother a custody order with regard to the plaintiff, as a child. Accordingly, there could not be any room to invoke ss. 103 and 106(3) of the Enactment. Further, s. 86 of the Islamic Family Law Enactment 2005 (Pahang) (Enactment 3) ('IFLE') does not concern the religion of an illegitimate child. Alternatively, if s. 86 of the IFLE allows the mother who has converted to Islam, to have the custody of the child, and the mother has the right to convert the child unilaterally – such interpretation of s. 86 of the IFLE is inconsistent with art. 12(4) of the FC and shall be void to the extent of its inconsistency with art. 12(4) of the FC. (paras 121 & 122)

(5) As the appellant had discharged the legal/evidential burden to prove on a balance of probabilities that she was not a Muslim from the beginning, by virtue of art. 11(1) of the FC, she had the freedom to practise Jakun's customs/spiritual beliefs without any interference from the respondents. (para 125)

Case(s) referred to:

Ah Thian v. Government Of Malaysia [1976] CLJU 3; [1976] 1 LNS 3 FC ***(refd)***

Azmi Mohamad Azam v. Director Of Jabatan Agama Islam Sarawak & Ors [2016] 6 CLJ 562 HC ***(dist)***

CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 6 CLJ 471 FC ***(refd)***

Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal [2024] 5 CLJ 855 FC ***(refd)***

Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 3 CLJ 145 FC ***(refd)***

Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener) [2020] 4 CLJ 731 FC ***(refd)***

Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal [2020] 10 CLJ 748 CA ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(foll)***

Tenaga Nasional Bhd v. Kamarstone Sdn Bhd [2014] 1 CLJ 207 FC ***(refd)***

Legislation referred to:

Administration of Islamic Law Enactment 1991 (Pahang) (En 3/1991), ss. 2(1)(a), (d), (e), (f), 36, 101, 102, 103, 106

Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor) (En 1/2003), s. 2(b)

Evidence Act 1950, ss. 74, 101(1), (2), 102

Federal Constitution, arts. 4(1), 11, 12(4), 121(1), (1A), 160(2), Second Schedule, Ninth Schedule

Guardianship of Infants Act 1961, ss. 5, 11

Interpretation Acts 1948 and 1967, s. 3

Islamic Family Law Enactment 2005 (Pahang) (Enactment 3), s. 86

Other source(s) referred to:

Francis Bennion, *Bennion on Statutory Interpretation*, 5th edn, p 969

For the appellant - Surendra Ananth, New Sin Yew & Nur Izni Syazwani Ahmad; M/s AmerBon

For the 1st respondent - Mohd Najid Husain, Nornajihah Ahmad Nadjemudin & Nadrah Jamil; M/s Mohd Najid & Partners

For the 2nd respondent - Saiful Edris Zainuddin, Rozanna Abdul Hadi, Dorah Abd Kadir & Fatin Nur Syahirah Abdul Rashid; SLAs, Pahang

[Editor's note: For the High Court judgment, please see Siti Nur Ain Sulaiman lwn. Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Anor [2023] CLJU 2198; [2023] 1 LNS 2198 (affirmed)).]

Reported by S Barathi

JUDGMENT

Azhahari Kamal Ramli JCA (Majority):

Introduction

[1] This is an appeal by the plaintiff in the court below against the decision of the High Court at Kuantan in dismissing her originating summons for a declaration that she is not a person professing Islam. It revolves around the issue of the appellant's religious status. In her originating summons (the OS) dated 14 July 2022, the plaintiff sought for the following orders or reliefs:

> 1. a declaration that the Plaintiff is not a person professing the religion of Islam;
>
> 2. a declaration that the word "parents" in paragraph (b) in the definition of "Muslim" in section 2, Administration of Islamic Law Enactment 1991 Pahang (Enactment No 3 of 1991) (referred to as "the Enactment") only refers to the parents of a legitimate child;
>
> 3. a declaration that the plaintiff has the right to practice and profess her own spiritual and cultural belief as an aboriginal person from the Jakun tribe without any interference from the defendants; and/or
>
> 4. costs to be borne by the defendants; and/or
>
> 5. any further and/or other order this Honourable court deems fit and/or otherwise appropriate.

[2] After hearing submissions from the plaintiff and the defendants the learned High Court Judge (HCJ) dismissed the OS on 22 February 2023. Dissatisfied with the said decision, the plaintiff now appeals before us seeking to reverse the decision of the learned HCJ.

[3] Both my learned brother, Justice Che Mohd Ruzima Ghazali and myself decided in favour of the appellant, whilst my learned brother, Justice Wong Kian Kheong dissented. We now give our reasons for deciding so. In this judgment, the parties will be referred to as they were in the court below while the word "Islam" and "Muslim" will be used interchangeably, depending on the context.

Background Facts

[4] The background facts of this appeal can be gleaned from the affidavits filed in the High Court as well as the written submissions of learned counsel herein. We would adopt the same with some modifications.

[5] The plaintiff was born out of wedlock on 27 November 1993 to one Sofiah binti Denting and Sulaiman bin Akim. The plaintiff's mother is an indigenous person of Jakun tribe. At the time of the plaintiff's birth, her mother was not a Muslim but practicing the customs and spiritual belief of

A the Jakun tribe. However, at that material time, the plaintiff's biological father was a Muslim. Both Sulaiman and Sofiah were never married. The plaintiff was not issued with a birth certificate.

[6] The plaintiff's mother embraced Islam on 14 November 1995. The plaintiff did not accompany her mother when the latter embraced Islam. The B plaintiff was then two years old. The plaintiff contended that her mother embraced Islam for the purpose of marrying Sulaiman. However, this never materialised. Be that as it may, the plaintiff's mother took the Muslim name of Sofiah binti Denting and remains a Muslim. The plaintiff's mother had been issued with a certificate of conversion to Islam by the first defendant. C The plaintiff's name appeared in the daftar rekod Muallaf Negeri Pahang, a record kept by the first defendant. In this regard, the plaintiff's mother claimed that at that material time, she did not decide nor consented to the plaintiff's conversion to Islam.

[7] It is the plaintiff's case that she never practiced Islam but instead, D practiced the customs and spiritual beliefs of the Jakun.

[8] When the plaintiff was about 13 years old, her mother had to apply for her identity card at the National Registration Department (NRD). During the application, the NRD officer stated that the plaintiff's religion as Islam E because her mother was a Muslim. Around the year 2008, the plaintiff went to the Islamic Religious Office in Kuala Rompin with her mother where she had informed the officer there that she did not want the word "Islam" on her identity card. She was at that time 15 years old. There, they were informed that since her mother had embraced Islam, the plaintiff was automatically considered a Muslim. The plaintiff further contended that the officer told F them that she could choose her religion when she turned 18 years old.

[9] On 28 January 2012 the plaintiff married one Tan Boon Tong, an indigenous man, according to Jakun tribal custom. They could not register their marriage because the NRD still considered the plaintiff a Muslim. On 9 February 2013 the plaintiff gave birth to their first child. In the birth G certificate of their first child, the column religion was stated as "no religion" and the plaintiff's religion as "co-religion". The plaintiff's husband inquired about her religion with the NRD office and they were asked by the NRD officer to obtain a letter from the Jabatan Kemajuan Orang Asli Kuala Rompin to confirm that the plaintiff is not a Muslim. An officer at the H Jabatan Kemajuan Orang Asli Kuala Rompin issued a letter titled "certificate of confirmation of no religion" and had also asked the plaintiff to affirm a statutory declaration before a Commissioner for Oaths. They returned to the NRD office with these documents; however, they were informed by the NRD officer that they cannot accept the documents and the NRD had I informed the Jabatan Kemajuan Orang Asli Kuala Rompin to retract the letter.

[10] On 6 November 2014, the plaintiff gave birth to their second child. In 2018, the plaintiff went to the NRD office in Muadzam Shah to seek clarification about her religious status. She informed the officer there that she was born before her mother embraced Islam and that she had never practiced Islam. The NRD officer asked her to obtain a letter from the Muadzam Shah Islamic Religious Office to confirm that she was not a Muslim. The plaintiff then went to Muadzam Shah Islamic Religious Office and while she was there, she was told that there was no record of her conversion to Islam. However, there was a record of her mother converting to Islam.

[11] On 26 May 2018, the plaintiff gave birth to their third child. In a letter dated 16 July 2018, the first defendant stated that they took a position that the plaintiff was a Muslim because her mother had converted to Islam.

[12] The plaintiff has two other siblings namely Nurshafina binti Sulaiman and Siti Nurasyikin binti Sulaiman. Both of them are Muslim. The plaintiff's mother is now married to Sanizam bin Abdullah since 8 October 2009.

The Decision Of The Learned HCJ

[13] In dismissing the OS the learned HCJ ruled that pursuant to s. 2(d) and s. 103 of the Enactment, supported by a fatwa issued by the State of Pahang and gazetted on 12 September 2013 and that she was an underage child at the time of the conversion of the mother, the plaintiff is a person professing Islam as she automatically follows the religion of the parent who converted to Islam. The learned HCJ also held that s. 103 of the Enactment is applicable despite there is no custody order in place. In this respect, the learned HCJ interprets that section to include situation where the parents have been taking care of a child since the child was born. The learned HCJ also held that there is no contravention of art. 12(4) of the Federal Constitution because the plaintiff's mother has consented for the plaintiff to be converted to Islam. This is evident by the fact that the plaintiff was given a Muslim name and was included in the mother's conversion card. The learned HCJ opined that that conduct must necessarily meant that the Muslim's name was voluntarily given by the plaintiff's mother herself, which showed her consent. The learned HCJ further held that the issue of consent from either parent is not relevant to the plaintiff's case as at the time of her birth, the father was a Muslim while her mother had converted to Islam when the plaintiff was two years old. The learned HCJ opined that the plaintiff has failed to prove that she was raised according to the practice and spiritual belief of an indigenous person. It was also held by the learned HCJ that the plaintiff's application was one of a renunciation case, a matter that falls under the jurisdiction of the Syariah Court.

Summary Of The Submission Of The Plaintiff

[14] The appellant submitted that she has consistently disputed her status as a Muslim and never at any time took a position that she was a Muslim. Following the Federal Court case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor*

& Anor [2021] 3 CLJ 301; [2021] 2 MLJ 181; [2021] 2 MLRA 70, her case is one of *ab initio* case and hence the civil court has jurisdiction to adjudicate on her application. She further submits that the question of whether she is a Muslim at birth or through conversion is a question of law, which once disputed must be determined by the civil court. Even though "Islam" was stated as her religion in her identity card, the plaintiff asserts that the religious details on a person's identification card do not conclusively determine their religious status. It is the plaintiff's contention that the learned HCJ had erred in relying on the definition of Muslim in s. 2(b) and (d). Consequently, the learned HCJ also erred when he ruled that she has automatically become a Muslim by virtue of s. 103 of the Enactment because, following *Rosliza*'s case (*supra*) the word "Muslim" in s. 2(b) of the Enactment must be interpreted as referring to legitimate parents, hence, illegitimate child cannot be included in the definition.

[15] The plaintiff also averred that s. 103 of the Enactment is not applicable to the facts of this case. It was submitted that the application of s. 103 is subject to the condition that there must also be an order of custody of the child, by a court other than the Syariah Court, to the parent who has converted. In the absence of the custody order, the plaintiff cannot be considered a Muslim. In this respect, it is also submitted that s. 103 of the Enactment must be interpreted in a manner consistent with the fundamental rights in Part II of the Federal Constitution. In this regard, the plaintiff contends that her mother did not make any decision for her to profess the religion of Islam. Even if the mother did consent for the plaintiff to be converted to Islam, the consent of the plaintiff's father and mother is required pursuant to art. 12(4) of the Constitution.

Summary Of The Submission For The Defendants

[16] The first defendant submitted that, in essence, the plaintiff is seeking for a declaration that she is no longer a Muslim (renunciation). The facts of the case show that the plaintiff is a Muslim as defined by s. 2(1)(d) of the Enactment read together with s. 103 of the Enactment. In this regard, it is not disputed that the plaintiff's mother has embraced Islam and that the plaintiff has been raised only by her mother and not by other people. In this regard, it was submitted that the plaintiff has failed to prove that she had been raised according to the practice, customs and spiritual belief of the Jakun tribe. The first defendant also submitted that the Fatwa entitled *"Status Agama Anak Bawah Umur 18 Tahun Selepas Salah Seorang Pasangan Memeluk Agama Islam"* which was gazetted on 12 February 2013 is applicable and binds the plaintiff. This fatwa states that, among others, that a child is a Muslim if one of the child's parents professes the religion of Islam. As such, the plaintiff's application should be brought before the Syariah Court.

[17] The second defendant's submission is substantially similar to that of the first defendant. In addition, it was submitted that nothing in the affidavits filed for the plaintiff show that there was a custody dispute between the plaintiff's mother and father. As such the need for a court order for the custody of the plaintiff does not arise. It is also submitted that a literal interpretation of s. 103 of the Enactment would lead to an absurd result. Instead, the court is urged to adopt a common-sense approach in interpreting this section to ensure justice of the case.

Analysis And Our Decision

[18] This is yet another case that requires the determination of the issue of jurisdiction of the civil and Syariah Courts pertaining to matters regarding the status of the religion of an individual. Hence, the determinative issue in this appeal is whether, based on the facts of this case, the civil court has the jurisdiction to determine the status of the plaintiff's religion.

[19] At the heart of this appeal are the provisions of ss. 2 and 103 of the Enakmen Pentadbiran Undang-Undang Islam 1991 (the Enactment) Pahang.

[20] In the course of submission, the plaintiff contended that the matter should be determined by the civil court whereas the defendants maintain that the matter should be determined by the Syariah Court.

[21] The point of contention between both the plaintiff and the defendants in this appeal is on the interpretation of the phrase "persons professing the religion of Islam" that appears in prayer 1 of the OS. Put in another way, the appeal revolves around the question of whether or not the plaintiff is a person professing the religion of Islam. Upon the determination of this primary issue, the issue of which court has the jurisdiction to hear the plaintiff's application will then be determined.

[22] This issue has been dealt with by the Federal Court. The position taken by the apex court is that the starting point in dealing with this issue is to consider the distinction between the case of "no longer a Muslim" (renunciation cases) and "never a Muslim" (*ab initio* case).

[23] In the case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301; [2021] 2 MLJ 181; [2021] 2 MLRA 70 Tengku Maimun CJ states:

> [90] At this juncture, a very fundamental distinction identified earlier emerges. There is a critical distinction between 'no longer a Muslim' on the one side, and 'never a Muslim', on the other. The former refers to renunciation cases where as explained, fall within the jurisdiction of the Syariah Courts. The latter, which may be loosely described as *ab initio* cases, cannot, on a coherent application of the law, fall within the jurisdiction of the Syariah Courts.

A ...

[93] *Ab initio* cases are unique and peculiar where the person claims never to have been a Muslim in the first place but for some reason or another he or she is designated as a person who 'professes the religion of Islam'. Logically, any legal presumption as to their Muslim status cannot apply
B because they were identified as Muslim to begin with. Here, *Lina Joy* and like cases may be distinguished by referring to the decision of Yew Jen Kie J (as she then was) in *Azmi*.

...

[98] What can be distilled from *Lina Joy* and like cases on the one side,
C and *Azmi* and like cases on the other, is that it is a matter of proof that the person affirmatively professed the religion of Islam at the material time. Absent such proof, the case may be classified as an *ab initio* case

[99] Reverting to the question: do civil courts possess jurisdiction to determine the status of persons who claim to 'never have been a Muslim'
D as opposed to 'no longer a Muslim'? The answer to the question must naturally be in the affirmative as otherwise there would be no legal recourse for persons of *ab initio* category. When it concerns a renunciation case, the civil courts have consistently held that it was within the jurisdiction of the Syariah Courts conferred under art. 121(1A) of the FC. For the record, the learned senior federal counsel appearing for the
E attorney general as *amicus curiae*, agreed that it is the civil court that have jurisdiction over persons of '*ab initio* category'.

...

[108] The case is no different here. At the risk of repetition, if a matter concerns an *ab initio* case, that is, the question whether a person is in the
F first place a 'person professing the religion of Islam' it necessarily concerns a question regarding one's identity under the FC which in turn necessitates constitutional interpretation. This is because the phrase 'persons professing the religion of Islam' is a constitutional term. Accordingly, the civil courts are empowered, indeed duty-bound to adjudicate the matter. It is only in renunciation cases where one already
G professes the religion of Islam (irrespective of whether they actually practice the faith) with the subsequent decision to change what they profess, that matter is removed to the jurisdiction of the Syariah Court. The distinction drawn from the cases of *Lina Joy* and *Azmi* illustrates the difference. Whether it is an *ab initio* case or a renunciation case will require a careful examination of the factual matrix of the case.

H

[24] The approach to be taken in determining the jurisdiction issue is further explained in the case of *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* [2024] 5 CLJ 855; [2024] 4 MLRA 453 thus:

[144] *Rosliza* decided that if one is never a Muslim in the first place then
I the challenge to establish the same should be heard before the civil courts. This is termed as *ab initio* case. On the other hand, if someone is already

a Muslim but wanted to leave that position, then only the Syariah Courts will have jurisdiction to determine the case. This is called an apostasy case.

[25] In both *Rosliza* and *Dahlia (supra)*, the apex court reiterated the position that the issue of whether a person professes the religion of Islam is a question of fact that need to be proved by the person who seek for such declaration. In *Rosliza* (*supra*), Azahar Mohamed CJ (Malaya) said:

[144] .... In my opinion, where the subject matter requires a determination of whether a person is or is not a Muslim under the law, the Civil High Court has the jurisdiction to hear and decide whether the case is properly brought before the civil courts by evaluating the factual matrix and circumstances presented before it and also the declaration that is being sought for.

[26] Whereas in *Dahlia* (*supra*), Abang Iskandar PCA stated:

[42] I have considered both parties' contentions, and by applying *Rosliza*, the facts and circumstances of the case must be carefully scrutinized and examined when dealing with a claim of "never was a Muslim".

[27] Hence, it is now incumbent on this court to identify the relevant facts that have been averred to in the affidavits filed by the parties so as to enable us to determine whether the case before us falls under the *ab initio* case or a renunciation case. They are as follows:

(i) the plaintiff is an illegitimate child of her biological parents *ie*, Sofiah binti Denting and Sulaiman bin Akim. The biological parents of the plaintiff were never married.

(ii) the plaintiff's mother had converted to Islam on 14 November 1995 when the plaintiff was two years old.

(iii) the plaintiff's mother had been issued with the certificate of conversion to Islam by the first defendant.

(iv) the plaintiff's mother had given a Muslim name to the plaintiff.

(v) in the Daftar Rekod Muallaf Negeri Pahang Tahun 1996/1999 (Register of Muallaf for the State of Pahang 1996/1999) (exhibit MUIP 2) shows that the plaintiff's mothers' original certificate of Conversion to Islam was replaced with a new one and the name of the plaintiff was also recorded in the said Daftar with the remark "Islam Bersama Ibu".

(vi) the plaintiff was raised by her mother alone.

(vii) around year 2008 the plaintiff was 15 years old she went to the Islamic Religious Office in Kuala Rompin where she told the officer that she did not want the word "Islam" on her identity card.

(viii) the first defendant in its letter dated 16.7.2018 took the position that the plaintiff was a Muslim because her mother had converted to Islam.

(ix) the plaintiff's mother is still a Muslim and two of her sisters Nurshafina binti Sulaiman (born on 14.1.1995) and Siti Nurasyikin binti Sulaiman (born on 16 October 2004) are also Muslim.

(x) The plaintiff's mother has also married a Muslim man by the name of Sanizam bin Abdullah on 8 October 2009.

Application Of Sections 2(1)(d) And 103 Of The Enactment

[28] The above facts must now be considered in the light of the following provisions of the Enactment. Section 2 of the Enactment provides for the circumstances in which a person is considered a Muslim. In this case, the learned HCJ relied on s. 2(1)(d) which provides that a person is a Muslim if he has converted to Islam under s. 101 or pursuant to ss. 102 or 103 of the Enactment. In this case, the defendants contended that when the plaintiff's mother converted to Islam on 14 November 1995, s. 103 of the Enactment sets in and the plaintiff becomes a Muslim. Sections 2 and 103 have been interpreted differently by the plaintiff and the defendant, hence we find it appropriate to analyse and give our interpretation to it.

[29] For ease of reference, both ss. 2 and 103 of the Enactment are reproduced herewith:

2(1) Dalam Enakmen ini, melainkan konteksnya menghendaki makna yang lain:

orang Islam" ertinya:

(a) seseorang yang menganut agama Islam;

(b) seseorang yang sama ada kedua-dua ibubapa atau salah seorang daripadanya pada masa kelahiran orang itu adalah seorang Islam;

(c) seseorang yang sejak lahir dididik atau telah dididik oleh orang Islam atau dengan cara yang diterima oleh Islam;

(d) seseorang yang telah memeluk agama Islam menurut seksyen 101 atau menurut kuasa seksyen 102 dan 103;

(e) seseorang yang lazimnya dikenali sebagai seorang Islam; atau

(f) seseorang yang telah menyebut, dalam keadaan di mana ia terikat dengan undang-undang berkata benar, bahawa dia adalah seorang Islam, sama ada kenyataan itu dibuat secara lisan atau bertulis.

Section 103 of the Enactment provides:

03. Jika pada saat dia memeluk agama Islam, seseorang muallaf sama ada lelaki atau perempuan, ada mempunyai anak yang belum mencapai umur lapan belas tahun, dan anak itu telah diperintahkan oleh Mahkamah, selain daripada Mahkamah Syariah, supaya diletakkan di bawah penjagaan muallaf itu, dan muallaf itu menetapkan supaya anak itu memeluk agama Islam, maka anak tersebut adalah memeluk agama Islam pada masa penjagaan diberi.

[30] The defendants submitted that the plaintiff is a Muslim pursuant to s. 103 read together with s. 2(1)(d) of the Enactment. Hence, when the plaintiff's mother converted to Islam and the plaintiff's mother decided that the plaintiff may also be so converted, the plaintiff become a Muslim at the time custody was given to the plaintiff's mother. In short, the defendants argue that the religion of the plaintiff follows the religion of her mother at the time of the mother's conversion. In this respect, considering the structure of s. 2, we are of the view that sub-s. 2(1)(a) to (f) should be read disjunctively.

[31] In the present case, the plaintiff's mother did not dispute the fact that she had converted to Islam together with the plaintiff. This fact is corroborated by the entry in the Daftar Rekod Muallaf Negeri Pahang Tahun 1996/1999 (Register of Muallaf for the State of Pahang 1996/1999). This record is kept by the first defendant is a public document forming the act or records of the acts of a public officer under s. 74 of the Evidence Act.

[32] The plaintiff, however argued that s. 103 should be interpreted in the light of one other limb of the section, *ie*, that there must be an order, other than the order of the Syariah Court, that the said child be placed under the custody of the convert. In other words, the convert can only decide that the child under the age of 18 be converted to Islam, if there is an order of custody of the child issued by courts other than the Syariah Court. The plaintiff urges this court to adopt a literal interpretation of s. 103 and submitted that, in view of the fact that there is no such order granted to the plaintiff's mother, s. 103 is inapplicable.

[33] In this regard, we are of the opinion that the requirement of the custody order in s. 103 of the Enactment is irrelevant to the facts of the case. This is so in the light of s. 86 of the Enakmen Undang-Undang Keluarga Islam Pahang 2005 which provides that the custody of an illegitimate child lies solely with the mother and the mother's relative. It is not disputed that the biological father of the plaintiff has never married the plaintiff's mother. It is also not disputed that the custody of the plaintiff has remained with her mother since she was born. In the circumstances, the issue of a custody order for the plaintiff never arises and is irrelevant under s. 103 of the Enactment.

[34] Be that as it may, the defendants also submitted that the court should adopt the "common sense construction rule" to s. 103 because a literal interpretation of the section will create a *lacuna* in law since there is no provision regarding the religion of a child of a convert who is below the age of 18 who is under his/her custody without any custody order of a court.

[35] Learned counsel for the second defendant cited a passage from a book by Francis Bennion entitled *Bennion on Statutory Interpretation*, 5th edn, p. 969:

A Section 302. Presumption that 'absurd' result not intended

The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. Here the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is unworkable or impracticable, inconvenient,
B anomalous or illogical, futile or pointless, artificial or productive of a disproportionate counter-mischief.

At page 551 - 552

Section 197. the common sense construction rule.

C It is a rule of law (in this Code referred to as the common sense construction rule) that when considering, in relation to the fact of the instant case, which of the opposing construction of the enactment would give effect to the legislative intention, the court should presume that the legislature intended commons sense to be used in construing the enactment.

D At page 553

Drafter's silent When a particular matter is not expressly dealt with in the enactment this may simply be because the drafter thought that as a matter of common sense it went without saying.

E **[36]** The plaintiff's mother has never married her biological father. However, at all material times, the plaintiff was in her custody and the plaintiff's mother had been raising the plaintiff alone. There is no application for the custody of the plaintiff by her biological father. There is also no evidence that the plaintiff's mother has converted out of Islam. To the contrary, she remains a Muslim which can be seen from the fact that she had
F married her husband, who is a Muslim on 8 October 2009. Further, her two other daughters (the plaintiff's sisters) from her relationship with the plaintiff's biological father, who were born in 1995 and 2004, remain Muslims.

G **[37]** At the risk of repetition, it must also be stated that as late as in the year 2008, when she was 15 years old, the plaintiff was in the custody of her Muslim mother. This was the time when she went together with her mother to the NRD expressing her desire to drop the word "Islam" in her identity card. We also take note that the plaintiff married her husband, who is a non-Muslim on 28 January 2012. From the facts, in all probability we are
H of the view that the plaintiff has been raised up by her Muslim mother until she was 15 years old or until she was married on 28 January 2012.

[38] We agree with the defendants with regard to the correct interpretation of s. 103. A literal interpretation of s. 103 permits a Muslim convert who
I has a child (in all probability a child with his/her non-Muslim spouse) and a custody order is given to him (or her), to decide whether to convert his (or her) child to Islam. However, applying the same literal interpretation of

s. 103 to the present case, a Muslim convert mother of a child who is under 18 years old, but no order for custody was obtained, is prohibited from converting the said child to Islam even though the said child is in her custody at all times since she was born. We are of the view that it was never the intention of the drafters of the Enactment to discriminate the rights of Muslim convert mother to also convert her children who are under the age of 18 years under any circumstances. The common-sense construction rule would overcome any anomaly as discussed herein.

[39] The literal interpretation of s. 103 prohibits her mother from converting the plaintiff. However, applying the common sense construction rule, we find that the plaintiff's mother was entitled to convert the plaintiff at the time of her conversion to Islam even without a custody order. Hence, in this case, the plaintiff is a Muslim pursuant to s. 103 of the Enactment.

[40] This is not the end of the matter. We also need to be satisfied whether the plaintiff's mother had that decided that the plaintiff may also be so converted to Islam.

[41] In this respect, the first defendant has produced the 'daftar rekod' Muallaf Negeri Pahang Tahun 1996/1999 (Register of Muallaf of the State of Pahang) which shows an entry that the plaintiff's mother had been registered as a Muslim convert. It was also recorded that the plaintiff has been converted to Islam together with her mother (Islam Bersama Ibu). The Muslim name of the plaintiff was recorded as Siti Nur Ain binti Sulaiman. The plaintiff merely denies this fact by saying that the said record was entered by the officer of the first defendant and not her mother personally. Obviously, the record in the 'daftar rekod' Muallaf Negeri Pahang Tahun 1996/1999 was made by an officer of the first defendant as the record is an official act of the first defendant. This is the record based on the application and the facts presented by the plaintiff's mother.

[42] The fact that the plaintiff's mother had converted to Islam is not disputed. There is also no evidence that her mother had been forced to convert to Islam. As such, it is our considered view that the particulars that were recorded in the 'daftar rekod' Muallaf Negeri Pahang Tahun 1996/1999 are consistent with s. 103 of the Enactment and must be given the force of law. In this respect, the plaintiff's contention that she had never declared the Syahadah is irrelevant in this appeal.

[43] Considering the fact that the plaintiff has been raised by her mother alone, who remains a Muslim; and that the plaintiff was given a Muslim name at the time of registration of her conversion and has two other siblings who are Muslim, the reasonable inference that can be made from this fact is that, at the time of her conversion to Islam, the plaintiff's mother had decided that the plaintiff ought to be converted as well.

[44] It is contended by the plaintiff that as she is now disputing her status as a Muslim, the civil court has jurisdiction to deal with her application. On this point, learned counsel relied on the case of *Azmi Mohamad Azam v. Director Of Jabatan Agama Islam Sarawak & Ors* [2016] 6 CLJ 562; [2017] 9 MLJ 541; [2016] MLRHU 289 which was referred to in *Rosliza* (*supra*) and maintain that the validity of her conversion can only be determined by the civil court.

[45] However, we find that in *Azmi*'s case (*supra*) the applicant did not challenge the validity and legality of his conversion to Islam when he was a minor. Having become a major, he was exercising his constitutional right of freedom of religion, decided on Christianity as the religion of his choice and seek a declaration that he was a Christian. The High Court was not discussing any provision under the Syariah Court Ordinance 2001 of the State of Sarawak similar to ss. 2 or 103 of the Enactment. In fact, Director of Jabatan Agama Islam Sarawak and two other respondents had entered into a consent judgment to issue a letter of no objection to the applicant to "come out of Islam". The problem faced by the applicant in *Azmi* (*supra*) arose when the National Registration Department insisted that on a letter of release from Islam and a court order for the purpose of processing the applicant's application to change his name and the religion status in his identity card. However, it was revealed that the Syariah Court Ordinance 2001 does not "clothe the Syariah Courts with dealing apostasy matters" which was confirmed by Ketua Hakim Syarie, Jabatan Kehakiman Syariah Sarawak. It was also revealed that Majlis Islam Sarawak Ordinance 2001 (Cap 41) also does not make any provision in respect of matters relating to apostasy or conversion out of Islam.

[46] We find that the issue before us is related to the interpretation of the word "Muslim" under ss. 2 and 103 of the Ordinance which was not discussed in *Azmi* (*supra*). We have no qualm in applying the principle of law in *Rosliza* (*supra*), however, the facts in *Azmi* (*supra*) is distinguishable and is not applicable to our case at hand and do not support the plaintiff's argument that this is a "never a Muslim" (*ab initio* case).

Religious Status On The Plaintiff's Identity Card Do Not Conclusively Determine The Religious Status?

[47] We agree with the plaintiff that a person's religious detail on an identity card does not conclusively determine their religious status. In *Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal* [2020] 10 CLJ 748; [2021] 1 MLJ 120; [2021] 1 MLRA 286 this court states:

> [136] With the foregoing authorities in mind, we are of the view a MyKad is not conclusive evidence of religious identity. Just because a MyKad states "Islam" does not *ipso facto* mean that the given person is to be taken as a person 'professing the religion of Islam', firstly, our reading of *Lina*

Joy suggests that the Federal Court, strictly considering administrative law, held that the NRD was not incorrect to require an order from the Syariah Courts before removing the word 'Islam' from the applicant's MyKad. The Federal Court did not venture to say that a MyKad was in fact conclusive of her status as a person 'professing the religion of Islam. We are fortified in our view by comparing the decision of *Lina Joy* to the decision in *Azmi*.

[137] But for the sake of caution, we hasten to add that if a person's MyKad clearly does not state that he or she is not a Muslim, given the unique circumstances adjudicated in *Lina Joy*, there would be no reason to investigate such a person for a Syariah offence because it is clear that he or she is not a Muslim. However, if his/her MyKad says he/she is 'Islam', then that is where the ambiguity lies, because the religious identity as stated in the MyKad is not conclusive proof of what is stated if that fact is disputed. Thus, any person alleging a fact in the MyKad to be true still bears the burden of proving its truth.

[48] In the present case, the defendants contended that the plaintiff's mother had supplied the information leading to the issuance of the plaintiff's identity card, which included her religion's status. In view of the challenge made by the plaintiff on her religion's status that appeared in her identity card, the defendant now bears the burden to prove its truth.

[49] In this regard, we are of the view that the following facts corroborate the truth of the plaintiff's religion's status that appeared on her identity card:

(i) the 'daftar rekod' Muallaf Negeri Pahang Tahun 1996/1999 which clearly states that the plaintiff's religion is Islam following the religion of her mother;

(ii) she was given a Muslim name by her mother;

(iii) she was raised by her mother, who is a Muslim;

(iv) her two other sisters are Muslim; and

(v) besides her bare allegation, there is no evidence that she is actually practising the customs and spiritual beliefs of the Jakun.

[50] In the light of the above, we are of the view that the status of the religion of the plaintiff that appears on her identity card is conclusive proof of what is stated thereon which supports the defendant's contention that this is a case of "no longer a Muslim" (renunciation cases).

Consent Of The Plaintiff's Father

[51] It was submitted for the plaintiff that even if the plaintiff's mother did consent to the plaintiff to be converted to Islam, the consent of both the plaintiff's father and mother is required pursuant to art. 12(4) of the Federal Constitution (FC) and ss. 5 and 11 of Guardianship of Infants Act 1961. This proposition of law is consistent with the decision in *Indira Gandhi Mutho*

v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 3 CLJ 145; [2018] 1 MLJ 545; [2018] 2 MLRA 1. It was impressed upon us by learned counsel for the plaintiff that the absence of the consent of the plaintiff's father for the conversion had contravened art. 12(4) of the Federal Constitution (FC) and ss. 5 and 11 of Guardianship of Infants Act 1961.

[52] Firstly, it must be noted that the decision in *Indira Gandhi* (*supra*) on the need of the consent of both parents is not applicable in this appeal as the conversion took place in 1995, whereas *Indira Gandhi* (*supra*) which was decided in 2018 do not have retrospective effect. This position of law is explained in *Dahlia* (*supra*) as follows:

> [202] That said however, I have my reservation on Dahlia's contention that the consent of the mother alone was invalid based on *Indira Gandhi.* This is because her conversion took place in 1991, long before *Indira Gandhi* was decided in 2018 and which decision was expressly declared to have a prospective effect only. Thus, both parents' consent is only relevant to be considered on the conversion post *Indira Gandhi's* decision.

[53] Secondly, it must be emphasised that the learned HCJ had relied on s. 2(1)(d) (read with s. 103) of the Enactment in finding that the plaintiff is a Muslim. Hence, the plaintiff's reference to s. 2(1)(b) in the written submission is incorrect. It follows that reference to art. 12(4) of the FC is misconceived.

[54] Thirdly, it is not disputed that at all material time, the plaintiff's father was a Muslim, hence, the issue of consent of the plaintiff's father is not relevant. We take the view that the father, being a Muslim, is deemed to have consented to the conversion of his daughter into his religion, namely Islam.

[55] Fourthly, the plaintiff is an illegitimate child born out of the wedlock of her parents. This begs a question of whether the word "parent" in art. 12(4) of the FC should be interpreted to apply to parents not lawfully married under the law.

Article 12(4) provides:

> (4) For the purposes of Clause (3) the religion of a person under the age of eighteen shall be decided by his parent or guardian.

[56] We are of the view that the word "parent" should always refer to a lawfully wedded parent. We find assistance in our interpretation from the case of *CTEB & Anor v. Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 6 CLJ 471; [2021] 4 MLJ 236; [2021] 4 MLRA 713. In that case, the Federal Court held that:

> [157] From the express distinction for parents or father of an illegitimate child in s 17, it is obvious that the word 'parents' in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation. **This country never legally recognised unwedded parents**. I say so because proper distinctions have always been

made in our legislation in order to differentiate between the status of 'parents' in a recognised marriage or otherwise. Even under s 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear distinction between a father or mother of an illegitimate child. This connotes that **'parents' refers always to legally wedded parents, not biological father and mother**.

(emphasis added)

[57] We are minded that *CTEB* (*supra*) is an authority for citizenship applications under Part III of the FC. However, the apex court made a definitive pronouncement that only partners in a legally wedded parent would be recognised and accorded with the right in matters concerning a child in constitutional matters. In the context of art. 12(4), we are of the considered view that the religion of a person under the age of 18 shall be decided by his lawfully wedded parent. We are also of the considered view that, applying *CTEB* (*supra*), s. 17 of Part III in the Second Schedule of the FC is equally applicable to the present case, *albeit*, a provision pertaining to the religion of a child. Section 17 of Part III in the Second Schedule provides:

17. For the purpose of Part III of this constitution references to a person's father or to his parents, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly s. 19 of this schedule shall not apply to such a person.

[58] In the light of the above proposition, the case of an illegitimate child, the religion of a child under the age of 18 years shall be decided by his or her mother. In the present case, the consent of the plaintiff's father is irrelevant. Hence, s. 103 of the Enactment cannot be said to be inconsistent with art. 12(4).

Applicability Of The Fatwa Issued By The Pahang State Government

[59] The learned HCJ in his grounds of judgment accepted the Fatwa issued by the Mufti for the Pahang State Government which decreed that the religion of a child below the age of 18 years would follow the religion of the parent that has converted to Islam. The fatwa which was issued pursuant to s. 36 of the Enakmen Pentadbiran Undang-Undang Islam 1991 and gazetted on 12 September 2013 as *Gazette* notification no 1564 provides:

Fatwa yang dinyatakan dalam Jadual yang dibuat oleh Mufti Negeri di bawah subseksyen 36(1) Enakmen Pentadbiran Undang-Undang Islam 1991 [Enakmen No. 3 tahun 1991] setelah diluluskan oleh Jawatankuasa Perundingan Hukum Syarak menurut subseksyen 39(2) Enakmen itu adalah disiarkan menurut subseksyen 36(2) Enakmen itu:

Jadual

Status Agama Anak Bawah Umur 18 Tahun Selepas Salah Seorang Pasangan Memeluk Islam

A

> Apabila salah seorang ibu atau bapa memeluk Islam, agama anak di bawah umur juga adalah Islam. Penjagaan anak tersebut hendaklah diletakkan di bawah ibu atau bapa yang beragama Islam. Dalam keadaan tertentu penjagaan boleh diberikan kepada ibu atau bapa yang bukan Islam dengan syarat memastikan makan mimumnya halal dan dididik dengan ajaran Islam.

B

[60] In this regard we agree with learned counsel for the plaintiff that the said fatwa cannot be applied retrospectively to the date of the conversion of the plaintiff's mother in 1995. Further, there is no provision in the Enakmen which authorises the Mufti to issue a fatwa with retrospective effect. In this respect, the Federal Court case of *Tenaga Nasional Bhd v. Kamarstone Sdn Bhd* [2014] 1 CLJ 207; [2014] 2 MLJ 749; [2014] 1 MLRA 165 has held that:

C

> [5] ... Still, we could take this opportunity to uphold that it is indeed a rule of construction that statute should not be interpreted retrospectively to impair an existing right or obligation, unless such a result is unavoidable by reason of the language used in the statute.

D

[61] We agree with the plaintiff on this issue and rule that the learned HCJ has erred in law on this part of his judgment.

Conclusion

E

[62] The plaintiff reiterated that she is asking for a declaration that she be allowed to continue to freely embrace her identity as an indigenous person of Jakun tribe and to continue practicing her customs, cultural practice and spiritual beliefs of a member of such tribe and not forced to profess Islam.

F

[63] We have no hesitation to endorse this submission as the right of the plaintiff is guaranteed by the FC. However, following the Federal Court's decisions in *Rosliza* (*supra*) and *Dahlia* (*supra*), the jurisdictional issue of this court would need to be determined first. The civil court would not interfere with, and would respect the powers and jurisdiction of the Syariah Court under the State List of the Ninth Schedule of the FC. Once the issue of jurisdiction is determined, the plaintiff is at liberty to present her case, in the exercise of her constitutional right. As illustrated in *Azmi*'s case (*supra*), the Syariah Court or the State Authorities are not in less position to ensure justice is done to any litigant before them.

G

H

[64] Based on the reasons above, we are of the opinion that the appeal before us falls under the category of a renunciation case. The proper forum with the necessary jurisdiction to adjudicate on the matter is the Syariah Court. We find no appealable error committed by the learned HCJ. This appeal is hereby dismissed. The decision of the learned HCJ is hereby affirmed. No order as to costs.

I

Wong Kian Kheong JCA (Dissenting):

Introduction

[65] My learned brothers, Che Mohd Ruzima bin Ghazali and Azhahari Kamal bin Ramli JJCA, had delivered a majority decision which dismissed this appeal with no order as to costs.

[66] I have had the misfortune to dissent in this appeal. This judgment provides my reasons for doing so.

Background

[67] The appellant (appellant) was born out of wedlock on 27 November 1993 to Puan Sofiah and En Sulaiman bin Akim (En Sulaiman).

[68] At the time of the appellant's birth:

(i) the appellant's mother, Puan Sofiah, an aborigine (orang asli):

(a) practised the customs and spiritual beliefs of the Jakun tribe (Jakun's customs/spiritual beliefs);

(b) was not a Muslim; and

(ii) Encik Sulaiman, the appellant's father, was a Muslim.

[69] The appellant is called Anne.

[70] No birth certificate was issued to the appellant.

[71] Puan Sofiah and the appellant resided in a village named Kampung Rantau Panjang (village). The village is inhabited by the Jakun tribe which practises Jakun's customs/spiritual beliefs.

[72] Since the appellant's birth, the appellant has never practised Islam but only Jakun's customs/spiritual beliefs.

[73] Before the appellant was born, En Sulaiman already had a wife and other children. En Sulaiman represented to the appellant's mother that he would divorce his wife and marry the appellant's mother. Consequently, around 14 November 1995, for the purpose of marrying En Sulaiman, the appellant's mother converted to Islam.

[74] En Sulaiman did not divorce his wife. Nor did Sulaiman marry the appellant's mother.

[75] At the time of the conversion of the appellant's mother, the appellant was about two years old. The appellant did not accompany her mother when her mother converted to Islam. Notwithstanding the conversion of the appellant's mother to Islam, the appellant had practised and still practises Jakun's customs/spiritual beliefs.

[76] When the appellant was about 13 years old, her mother had to apply for an identity card (IC) for the appellant with the National Registration Department (NRD).

[77] During the appellant's application for an IC, an officer of NRD stated the appellant's religion as Islam because her mother was a Muslim. The appellant's mother was reluctant to do so but eventually complied because the appellant needed an IC to register as a student in a Government school.

[78] Around 2008, when the appellant was 15 years old, she went to the office of "Pejabat Agama Islam" (PAI) in Kuala Rompin with her mother. The appellant informed PAI's officer there that she did not want the word "Islam" on her IC. The appellant and her mother were informed by PAI's officer that because the appellant's mother had converted to Islam, the appellant was automatically considered a Muslim. However, PAI's officer told them that the appellant could choose her religion after she turned 18 years old.

[79] On 28 January 2012, the appellant married Mr Tan Boon Tong (the appellant's husband), an Orang Asli, according to Jakun's customs/spiritual beliefs. The appellant's husband also practises Jakun's customs/spiritual beliefs. They could not register their marriage (marriage) because the appellant's IC stated that the appellant was a Muslim.

[80] After the marriage, the appellant and the appellant's husband continue to practise Jakun's customs/spiritual beliefs.

[81] On 9 February 2013, the appellant gave birth to their first child, Tan Boon Lian (the appellant's first child). The birth certificate of the appellant's first child birth certificate (the appellant's first child) stated "tiada agama" (co-religion) for the appellant, the appellant's husband and appellant's first child.

[82] The appellant's husband inquired about the status of the appellant's religion with the NRD's office in Kuala Rompin. NRD asked the appellant to obtain a letter from "Jabatan Kemajuan Orang Asli" (JKOA) in Kuala Rompin to confirm that the appellant was not a Muslim.

[83] The appellant and the appellant's husband met with En Khamis from JKOA at Kuala Rompin. JKOA issued a letter titled "certificate of confirmation of no religion" (JKOA's letter). En Khamis also advised the appellant to make a statutory declaration (SD) before a Commissioner for Oaths in Kuala Rompin, to affirm that the appellant was not a Muslim. The appellant had affirmed an SD which confirmed that she was not a Muslim.

[84] The appellant and the appellant's husband returned to NRD with JKOA's letter and the appellant's SD. However, the NRD officer informed the appellant and the appellant's husband that NRD could not accept JKOA's letter.

[85] NRD informed JKOA to retract JKOA's letter. En Khamis then asked the appellant and the appellant's husband to return JKOA's letter to JKOA but this was refused by the appellant and appellant's husband.

[86] NRD asked the appellant and the appellant's husband to return the birth certificate (appellant's first child) so that the religious status of the appellant's first child could be recorded as a Muslim. The appellant and the appellant's husband refused to do so.

[87] NRD did not return the appellant's SD.

[88] On 6 November 2014, the appellant gave birth to their second child, Tan Shu Wen (appellant's second child). The birth certificate of the appellant's second child (birth certificate (the appellant's second child)) stated "tiada agama" for the appellant, the appellant's husband and the appellant's second child.

[89] Around 2018, the appellant went to the NRD office at Muadzam Shah, to seek clarification about her non-Muslim status. She informed the NRD officer there that she was born before her mother converted to Islam and that she had never practised Islam. The NRD officer asked her to obtain a letter from PAI's office at Muadzam Shah to confirm that she was not a Muslim.

[90] The appellant went to JKOA's office at Muadzam Shah where she met En Hadi. En Hadi informed the appellant that her case would be referred to JKOA's office in Kuantan.

[91] The appellant then went to PAI's office at Muadzam Shah. She was told by a PAI officer that there was no record of her conversion to Islam. PAI only has a record of the conversion of the appellant's mother to Islam. She was then asked to go to the first respondent's (first respondent) office.

[92] When the appellant went to the first respondent's office, she was informed that the first respondent would issue a letter to NRD. The first respondent issued a letter dated 16 July 2018 (the first respondent's letter (16 July 2018)) which stated that the appellant had converted to become a Muslim by the appellant's mother on 14 November 1995 and was registered as a Muslim in the first respondent's register of "Muallaf" (Pahang's Muallaf Register).

[93] The appellant gave birth to their third child on 26 May 2018, Tan Boon Liang (appellant's third child). The appellant and the appellant's husband did not apply for a birth certificate for the appellant's third child for fear that the appellant's third child would be forcibly considered a Muslim.

[94] The appellant was informed that En Sulaiman had passed away in 2018.

Proceedings In The High Court

[95] The appellant filed an originating summons (OS) in the High Court. In this OS, the appellant prayed for, among others the following declarations:

(i) the appellant is not a person who professes the religion of Islam.

(ii) the word "parents" in para. (b) of the definition of the term "Muslim" in s. 2(1) of Pahang's Administration of Islamic Law Enactment 1991 (AILE) only refers to parents of a legitimate child; and

(iii) the appellant has a right to practise and profess Jakun's customs/ spiritual beliefs without any interference from the first respondent and the second respondent (second respondent) (referred collectively in this judgment as the "respondents").

[96] The OS was dismissed by the High Court with costs of RM1,000 to be paid by the appellant to each of the two respondents (High Court's decision). The following grounds for the High Court's decision were given in the learned High Court Judge's grounds of judgment (GOJ):

(1) the appellant is a person who professes the religion of Islam due to the following reasons:

(a) according to s. 86 of Pahang's Islamic Family Law Enactment 2005 (IFLE), the appellant's mother had custody of the appellant (who was an illegitimate child at the material time) – para. 18 GOJ. When the appellant's mother converted to Islam, by virtue of s. 103 AILE, the religious status of the appellant (as a child) would follow the religion of the appellant's mother (who had custody of the appellant) – paragraphs 24 and 25 GOJ;

(b) a Pahang State Fatwa (gazetted on 12 September 2013) stated that the religious status of a child below 18 years old, shall follow the religion of either the mother or father who has converted to Islam (Pahang State Fatwa (12 September 2013)) – paragraphs. 19 and 20 GOJ; and

(c) paragraphs 21 and 22 GOJ explained that the High Court could apply the Pahang State Fatwa (12 September 2013) according to two Federal Court decisions, namely:

(i) the judgment of Azahar Mohamed CJ (Malaya) in *Rosliza bt Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181, at [131], [156] and [162]; and

(ii) the 4-3 majority judgment delivered by *Rohana Yusuf PCA in Jabatan Pendaftaran Negara & Ors v. A Child & Ors (Majlis Agama Islam Negeri Johor, Intervener)* [2020] 2 MLJ 277, at [73] and [75];

(2) Pahang's Muallaf Register proved that the appellant was a Muslim when the appellant's mother converted to Islam – paragraphs 16 and 27 to 31 GOJ;

(3) in paragraph 32 GOJ, the learned High Court Judge decided that the consent of the appellant's father for the appellant to be converted to Islam, was not relevant because the appellant was under the custody of her mother (who is a Muslim);

(4) the High Court distinguished this case from the Federal Court case of *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 1 MLJ 545 – paragraphs 33 to 36 GOJ. Hence, art. 12(4) of the Federal Constitution (FC) had no application in this case;

(5) the learned High Court Judge distinguished *Rosliza* from this case – paragraphs 41 to 43 GOJ;

(6) according to the High Court in paragraph 44 GOJ, the appellant had not adduced any evidence that she was brought up in accordance with Jakun's Customs/Spiritual Beliefs; and

(7) as the appellant was a Muslim and had been brought up by her mother as a Muslim, if she was to renounce Islam, such a matter fell within the exclusive jurisdiction of the Syariah Court – paragraphs 45, 47 and 50 GOJ. This decision was supported by:

(a) the Federal Court's judgment in *Rosliza* – paragraph 46 GOJ; and

(b) the Administration of Islamic Law (Amendment) Enactment (No. 2) 2020 [Amendment Enactment (A82)] which introduced ss 111E and 111H AILE – paragraphs 48 and 49 GOJ.

[97] The appellant had appealed to the Court of Appeal against the High Court's decision (this appeal).

Issues

[98] The following questions will be discussed in this appeal:

(i) does the civil court have exclusive jurisdiction under art. 121(1) of the FC to decide on whether a person (X) is a Muslim from the beginning (*ab initio*) or otherwise? The resolution of this issue entails a discussion of:

(a) Article 121(1) and (1A) of the FC;

(b) the two judgments in the Federal Court case of *Rosliza*; and

(c) the three judgments (two majority and one dissenting judgment) in *Dahlia Dhaima Abdullah v. Majlis Agama Islam Selangor & Another Appeal* [2024] 5 CLJ 855; [2025] 1 MLJ 334;

(ii) in deciding the question in the above sub-para. (1):

(a) what is the effect of Pahang State Fatwa (12 September 2013)?; and

A (b) had the appellant discharged the legal and evidential burden to prove on a balance of probabilities that she is not a Muslim *ab initio*?; and

(iii) if the appellant can discharge the legal and evidential burden to prove on a balance of probabilities that she is not a Muslim from the beginning:

B (a) in view of art. 12(4) of the FC, can only one of the appellant's parents, namely, her mother, lawfully convert the appellant to Islam? In this regard, due to the supremacy of the FC in art. 4(1) of the FC, does art. 12(4) of the FC prevail over State Enactments, such as AILE, Amendment Enactment (A82) and IFLE?; and

C (b) can the appellant practise Jakun's customs/spiritual beliefs without any interference from the respondents?

Does The Civil Court Have Exclusive Jurisdiction To Decide The Question Of Whether A Person Is A Muslim *Ab Initio*?

D **[99]** Reproduced below are arts. 121(1) and (1A) of the FC:

> Article 121 Judicial power of the Federation
>
> (1) *There shall be two High Courts of co-ordinate jurisdiction and status, namely*:
>
> E (a) *one in the States of Malaya, which shall be known as the High Court in Malaya* and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
>
> F (b) *one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak* and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
>
> (c) (Repealed),
>
> and such inferior courts as may be provided by federal law; and the High Courts and inferior courts *shall have such jurisdiction and powers as may be conferred by or under federal law*.
>
> G (1A) *The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts*.
>
> (emphasis added)

H **[100]** The following two judgments in the Federal Court case of *Rosliza* decided that only the civil courts (not the Syariah Courts) have exclusive jurisdiction under art. 121(1) of the FC to decide on the question of whether a person is a Muslim from the beginning (*ab initio*) or otherwise (constitutional law question):

I (i) Tengku Maimum CJ decided as follows, at [3], [72], [84], [85], [89] to [104], [106], [108], [109], [125] and [126]:

[3] *The appellant failed in the courts below in her bid to seek recourse from the civil court. On 20 January 2020, this court granted the appellant leave to appeal on the following two questions of law*:

(a) *where the subject matter of a cause or matter requires a determination of 'whether a person is or is not a Muslim under the law' rather than 'whether a person is no longer a Muslim' whether the High Court has the exclusive jurisdiction to hear and determine the said subject matter on a proper interpretation of art 121 and Item 1 of the State List [FC]? and*

(b) *in light of reg 24(1) of the National Registration Regulations 1990 and where the truth of the contents of any written application for registration of an identity card or the contents of an identity card is not proven by affidavit or at trial, whether the said contents can be considered facts proved for a declaration of status under s 41 of the Specific Relief Act 1950?*

...

Question 1

[72] *Is this court, in the first place, allowed to make a finding that the plaintiff or Yap Ah Mooi, or both 'were never Muslims' as opposed to the finding that they are 'no longer Muslims'. It will be explained later that there is a fundamental difference between the two questions.*

...

[84] *Taken in this context, there is a notable difference between 'profess' on the one side and 'profess and practice' on the other. The former is a constitutional term and is justiciable before the civil courts. The latter phrase is a question of faith and dogma and therefore falls within the jurisdiction of the Syariah Courts by virtue of art. 121(1A) of the FC.*

[85] *The dispute before us relates to the question of one's constitutional identity. It therefore necessitates constitutional interpretation of something which only the superior courts of this country have the right to address. It is only when one's faith is the main subject-matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts. In this regard, there is a significant distinction between 'one who no longer professes the religion of Islam' on the one side, and 'one who never professes the religion of Islam', on the other. This will be further elaborated later.*

...

[89] *The High Court and the Court of Appeal are therefore correct in principle. If the plaintiff is a Muslim seeking to renounce her faith in Islam, then the matter being 'an offence against the precepts' of Islam, is within the jurisdiction of the Syariah Court due to art. 121(1A) [FC]. The Court of Appeal further confirmed this by following this court's decision in Lina Joy. However, the conclusion of the courts below that the plaintiff is a Muslim was based solely on the erroneous finding of fact that the plaintiff's parents were married during her birth and thus resulting in the*

erroneous application of s. 2(b) of the ARIE 2003. Premised on the earlier findings that the plaintiff is an illegitimate child, the conclusion formed on the said s. 2(b) is unsustainable.

[90] *At this juncture, a very fundamental distinction identified earlier, emerges. There is a critical distinction between 'no longer a Muslim' on the one side, and 'never was a Muslim', on the other. The former refers to renunciation cases which as explained, fall within the jurisdiction of the Syariah Courts. The latter, which may be loosely described as ab initio cases, cannot, on a coherent application of the law, fall within the jurisdiction of the Syariah Courts. To understand this, it would perhaps be useful to distinguish Lina Joy.*

[91] *Lina Joy involved a case where a self-admitted Malay Muslim woman filed a suit to remove the word Islam from her identity card. She wanted this because she purported to convert to Christianity to marry her betrothed who was of that religion. Originally, the case concerned both constitutional and administrative law questions. The constitutional aspect of the case concerned the appellant's (Azlina's) right to determine her own religion. The appeal however only dealt with the administrative law aspect as to whether the NRD was correct in law to require Azlina, to furnish an order from the Syariah Court before the word 'Islam' could be removed from her identity card. The discussion on the administrative law aspect is not relevant to the instant case and accordingly does not warrant comment. But the ratio of Lina Joy, appears to be that because Azlina was always a Muslim, it was necessary that any attempt by her to change her religion required the approval of the Syariah Court. In this context, Lina Joy is entirely distinguishable from the present case on the basis that the present case is an ab initio case and not a renunciation case.*

[92] *The same result as Lina Joy would be achieved if someone who was originally a non-Muslim sometime in his or her life converted to Islam but later chose to renounce Islam. An example of this is the case of Majlis Agama Pulau Pinang lwn. Siti Fatimah Tan Abdullah [2009] 1 CLJ (Sya) 162. In that case, a lady had converted to Islam from Buddhism to marry her Malay Muslim husband. The couple subsequently divorced and the woman applied to re-convert to Buddhism. The case again, is a renunciation case where someone claims to no longer be a Muslim.*

[93] *Ab initio cases are unique and peculiar where the person claims never to have been a Muslim in the first place but for some reason or another he or she is designated as a person who 'professes the religion of Islam'. Logically, any legal presumption as to their Muslim status cannot apply because they were never identified as Muslim to begin with. Here, Lina Joy and like cases may be distinguished by referring to the decision of Yew Jen Kie J (as she then was) in Azmi.*

[94] *According to the applicant in Azmi, he was raised in a Bidayuh Christian community. However, when he was younger the religion of Islam was chosen for him by his parents upon their conversion although his upbringing never matched that description. He claimed that when he attained the age of majority, he chose Christianity as his religion.*

Accordingly, he applied to the Sarawak branch of the NRD to remove Islam from his identity card and to change his name from 'Azmi bin Mohamed Azam Shah @ Rooney' to 'Roneey anak Rebit'. Most of the parties to the case agreed by consent to grant a letter of no objection on his 'renunciation' but the chief syariah judge claimed that he had no jurisdiction to grant the order of 'renunciation'. Based on this refusal, the applicant argued that in the first place, the Syariah Court had no jurisdiction to grant him the order because he was not in the first place a Muslim.

[95] *This is what Yew Jen Kie J held:*

…

[27] *It is to be noted that the applicant in the present case is a Bidayuh by race and had been raised and brought up in a Christian Bidayuh community since birth. The choice of Islam religion was decided for him by his parents following their own conversion to Islamic faith as he was ten years old. He has never practised the Islamic faith and has embraced Christianity. He is not challenging the validity of his minor conversion. In exercise of the constitutional religion freedom, he is seeking a declaration that he is a Christian.*

[96] *Most pertinently, Her Ladyship continued to observe as follows:*

[41] *Given that the Syariah Court shall have jurisdiction only over persons professing the religion of Islam, it is therefore helpful at this juncture to ascertain the meaning of 'professing' or 'profess'.*

[42] *In Words and Phrases Judicially Defined (1990 edn), p 447, under the word 'profess', it is stated:*

Now what is the meaning to be attached to the word 'profess'? According to the Shorter Oxford English Dictionary 'profess' means 'to affirm, or declare one's faith in or allegiance to (a religion, principle, God or Saints etc)' Re Mohamed Said Nabi, deceased [1965] 1 MLJ 121 at 122 per Chua J.

[43] *Longman Dictionary of Contemporary English defined 'profess' as 'a statement of your belief, opinion, or feeling'.*

[44] *From the definition aforesaid, it conveys the meaning that to profess a religion is making a public statement about the religion you believe in. Thus, a person professing the religion of Islam is a person who has made a public declaration, affirmed his faith in or his allegiance to Islam.*

[45] *It is a fact that the Islam religion was chosen and decided for the applicant (a minor) by his mother when she converted to be a Muslim; his conversion was not by reason that he professed the religion of Islam. To put it in another way, the conversion of the applicant to Muslim faith was not on his own volition by affirming, declaring his faith in or allegiance to Islam religion but by virtue of his mother's conversion when he was a minor aged ten years old and his mother has*

determined his religion. In my view, since the applicant, who is a Bidayuh by birth, had not in the first place professed his faith in Islam but his conversion followed that of his mother as he was a minor at the material time, logic dictates that he cannot be considered as a person professing that particular faith. That the applicant has not lived like a person professing Islam is seen in his averment that he was raised and brought up in the Bidayuh Christian community.

[97] The decision of Yew Jen Kie J in Azmi was appealed against but the appeal was subsequently withdrawn, the Director General of the National Registration Department v. Azmi bin Muhammad Azam @ Rooney (Court of Appeal, Civil Appeal No Q-01-159-05 of 2016). The NRD adhered to the decision of the High Court. The applicant's name was changed and the word 'Islam' was removed from his identity card.

[98] What can be distilled from Lina Joy and like cases on the one side, and Azmi and like cases on the other, is that it is a matter of proof that the person affirmatively professed the religion of Islam at the material time. Absent such proof, the case may be classified as an ab initio case.

[99] Reverting to the question: do the civil courts possess jurisdiction to determine the status of persons who claim to 'never have been Muslim' as opposed to 'no longer being a Muslim'? The answer to the question must naturally be in the affirmative as otherwise there would be no legal recourse for persons of the ab initio category. When it concerns a renunciation case, the civil courts have consistently held that it was within the jurisdiction of the Syariah Courts conferred under art 121(1A) of the FC. For the record, learned senior federal counsel appearing for the attorney general as amicus curiae, agreed that it is the civil courts that have jurisdiction over persons of the 'ab initio category'.

[100] The distinction between ab initio and renunciation cases and how the civil courts have always respected the Syariah Courts' jurisdiction in renunciation cases was most recently addressed by the Court of Appeal in Maqsood. Dr Badariah Sahamid JCA pertinently observed as follows:

> *[101] In this respect the civil courts appear to make a distinction between conversions out of Islam by those who were Muslims by original faith and those who were non-Muslims by original faith. In the former, premised on their original faith, they were subject to the jurisdiction of the Syariah Courts and require a renunciation in the Syariah Court to confirm their non-Muslim status. As for the latter, it is on the premise that they were non-Muslims to begin with and therefore not subject to the jurisdiction of the Syariah Courts, that no such renunciation of Islam was required for any supposed renunciation of their Islamic 'faith'.*

[101] In applying the above principle to the facts of that case, Her Ladyship opined as follows:

> [116] *To clarify, if a person was born and raised as an Ahmadiyya, then his original religion is the Ahmadiyya religion. Because the Two Fatwas declare that his faith is not*

Islam, then in the State of Selangor, an Ahmadiyya is a non-Muslim just as a Christian or a Hindu is a non-Muslim. If however, a person is born and raised as a Muslim (whether he chooses to practise his beliefs or not), he is in law a person 'professing the religion of Islam'. Should he change his religion from Islam to Ahmadiyya, just as if he were to attempt to renounce Islam for any other faith, he cannot in law do so unless by order of the Syariah Court as prescribed by the relevant state law. Thus, any renunciation of the Islamic faith is within the jurisdiction of the Syariah Courts (see for example: Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1 and Lina Joy. In Soon Singh, the Federal Court held that the jurisdiction of the Syariah Court to deal with conversion out of Islam, although not expressly provided for in some State Enactments, can be read into those Enactments by implication.

[102] *Based on the discussion of Lina Joy and Azmi, I agree with the articulation of the Court of Appeal in Maqsood, on the difference between ab initio cases and renunciation cases and which of the two courts, the civil courts or Syariah Courts have jurisdiction. For the reasons stated earlier in respect of question two, I am also minded to think that the Court of Appeal's observations in respect of the legal status of identity cards vis-a-vis reg 24 of the NRR 1990 is correct. Incidentally, at the time of writing this judgment, the applications for leave to appeal against the decision of the Court of Appeal were dismissed by this court on 21 December 2020 (see Maqsood Ahmad & Ors v. Ketua Pegawai Penguatkuasa Agama & Ors (Federal Court Civil Application No 08(f)-266-09 of 2020(B) and Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors Federal Court Civil Application No 08(f)-272-09 of 2020).*

[103] *All judicial power vests solely in the civil superior courts as per the basic structure of our FC ingrained in art 121. However, art 121(1A) dispossess the civil courts of jurisdiction ratione materiae once it is established that the subject-matter of the suit is one which falls within the jurisdiction of the Syariah Courts. Having said that, in ab initio cases, the issue before the court is not one of faith. It is a question of one's identity under the FC. In contrast, renunciation cases concern persons who despite being Muslims, no longer have faith or believe in the religion.*

[104] The phrase 'professing the religion of Islam' is a provision of the FC. Ascertaining the meaning of any provision of the FC is a judicial power classified broadly under the umbrella of judicial review and accordingly, it is a power vested strictly and only in the civil superior courts. …

…

[106] To put into perspective the point that although a matter may have religious connotations to it, if it requires constitutional interpretation, only the civil courts have the power to ascertain it, reference is made to the

A *judgment of this court in Abdul Kahar bin Ahmad v. Kerajaan Negeri Selangor (Kerajaan Malaysia, intervener) & Anor [2008] 3 MLJ 617 ('Abdul Kahar').*

…

B *[108] The case is no different here. At the risk of repetition, if a matter concerns an ab initio case, that is, the question whether a person is in the first place a 'person professing the religion of Islam' it necessarily concerns a question regarding one's identity under the FC which in turn necessitates constitutional interpretation. This is because the phrase 'persons professing the religion of Islam' is a constitutional term. Accordingly, the civil courts*

C *are empowered, indeed, duty-bound to adjudicate the matter. It is only in renunciation cases where one already professes or proclaims to profess the religion of Islam (irrespective of whether they actually practise the faith) with the subsequent decision to change what they profess, that the matter is removed to the jurisdiction of the Syariah Court. The distinction drawn from the cases of Lina Joy and Azmi illustrates the difference.*

D *Whether it is an ab initio case or a renunciation case will require a careful examination of the factual matrix of the case.*

[109] On the foregoing analysis, question one is answered in the affirmative.

...

E *[125] For the reasons aforesaid, the plaintiff has made out her claim on a balance of probabilities. The concurrent categorisation by the courts below of the plaintiff's case as a renunciation as opposed to an ab initio case, is not correct in fact and in law.*

[126] The plaintiff's appeal is accordingly allowed and the orders of the High Court and Court of Appeal are hereby set aside. An order is granted in

F *terms of the OS, to wit, the declaratory relief reproduced in para 5 of this judgment. There shall be no order as to costs.*

(emphasis added)

The above judgment of Tengku Maimun CJ was concurred by Rohana Yusuf PCA, Nallini Pathmanathan FCJ, Abdul Rahman Sebli FCJ

G (as he then was), Zabariah Mohd Yusof FCJ, Mary Lim Thiam Suan FCJ and Rhodzariah Bujang FCJ, at [127]; and

(ii) Azahar Mohamed CJ (Malaya) agreed with the answers provided by Tengku Maimun CJ to the two questions of law raised in *Rosliza* but differed with regard to the relief to be granted in favour of the appellant,

H at [127]. Azahar Mohamed CJ (Malaya) decided as follows, at [143] and [147]:

[143] In my opinion, both the courts below erred in failing to appreciate that the appellant is not claiming that she is 'no longer a Muslim'. One crucial point needs to be made here. The present case is not a case of renunciation.

I *It is not an 'exit case'. We are concern here with the question of whether the appellant was a Muslim at birth, which is a question of law. The courts below made an erroneous finding that the present case fell outside the civil courts' jurisdiction.*

...

[147] For all the above reasons, on the first question of law posed, I conclude that where the subject matter of a cause or matter requires a determination of 'whether a person is or is not a Muslim under the law' rather than 'whether a person is no longer a Muslim', the High Court has the exclusive jurisdiction to hear and determine the said subject matter. In consequence, my answer to the question is in the affirmative.

(emphasis added)

Hasnah Mohamed Hashim FCJ (as she then was) agreed with the above judgment of Azahar Mohamed CJ (Malaya).

[101] In a 2-1 majority decision in *Dahlia Dhaima*, all three judgments in *Dahlia Dhaima* accepted *Rosliza* (with regard to the constitutional law question) as follows:

(i) according to Abang Iskandar PCA, at [2] to [4], [42], [46], [53] and [57]:

[2] *This case deals essentially with the application of the law enunciated in Rosliza bt Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 3 CLJ 301 ('Rosliza'), a landmark decision of this court which demarcates between the categories of one who 'never was a Muslim' on the one side and one who 'no longer a Muslim' on the other. In the former ab initio category, the civil court was held to possess jurisdiction to determine one's religious status. In the latter category which is termed as a renunciation case, the jurisdiction remains with the Syariah Court.*

[3] *According to Rosliza, a determination of whether it is an ab initio case or a renunciation case requires a careful examination of the factual matrix of the case; the circumstances presented before the court; and the declaration that is being sought for. The question is, to what extent the facts and circumstances of a particular case are to be examined and considered in a claim of 'never was a Muslim' in the context of the present appeal, by applying Rosliza?*

[4] According to *Dahlia*, the point of entry into Islam, *ie*, her conversion is the determining point of evaluating her claim of 'never was a Muslim'. Crucially she said that the validity of her conversion determines whether she never was a Muslim or not. The respondents on the other hand argued that an approach of focusing only on the conversion point is incorrect because according to *Rosliza*, the entire factual matrix of the case must be examined, and that must necessarily include an examination of subsequent events post her conversion, irrespective of the validity or invalidity of conversion. I will delve more into these differing approaches later in this judgment.

...

[42] *I have considered both parties' contentions, and by applying Rosliza, the facts and circumstances of the case must be carefully scrutinised and examined when dealing with a claim of 'never was a Muslim'. …*

A ...

[46] *Thus, notwithstanding the legal status of Dahlia's conversion, I am in agreement with the respondents on the correct approach to apply when determining whether a case falls within the 'never was a Muslim' case-category. In doing so, it is incumbent upon us to examine the entire factual matrix and*
B *circumstances of the case as was decided by this court in Rosliza.*

...

[53] *Thus, the net effect is that, based on the reason that Dahlia was once a Muslim, and by applying Rosliza, the Syariah Court was seised with jurisdiction to deal with the 'no longer a Muslim' case-category. And hence, until*
C *and unless the decision of the Syariah Court is set aside, its findings and order are valid and enforceable. They are not null by reason of want of jurisdiction.*

...

[57] *Lest it be misunderstood, I need to emphasise that the present appeals do not concern any question of constitutional or statutory interpretation as was*
D *present in Indira Gandhi and Rosliza. Rather, these appeals are an illustration of the application of Rosliza, whose approach requires an assessment of the facts and circumstances that are presented before us in our determination of whether Dahlia falls under the category of 'never was a Muslim' as opposed to 'no longer a Muslim'.*

(emphasis added)

E

(ii) Abu Bakar Jais FCJ (as he then was) decided in the majority decision as follows, at [222]:

[222] *In conclusion, I would say that this is clearly an apostacy or renunciation case where the Syariah Courts have jurisdiction to determine as required by*
F *Rosliza. It would indeed be inappropriate, unjust to the system of judicial administration and power of the Syariah Courts and wholly unjustified for the same to be supplanted of its jurisdiction and for the jurisdiction instead to be conferred on the civil courts, considering the facts and law that should be applicable in this case.*

(emphasis added)

G

(iii) Mary Lim Thiam Suan FCJ dissented but applied *Rosliza* as follows, at [268] and [272] to [274]:

[268] *The next decision that requires careful understanding is Rosliza ...*

...

H

[272] *'Ab initio' cases are explained by the Federal Court as 'unique and peculiar where the person claims never to have been a Muslim in the first place but for some reason or another he or she is designated as a person who 'professes the religion of Islam'. Logically, any legal presumption as to their Muslim status cannot apply because they were never identified as Muslims to begin with'. It is*
I *a matter of proof that a person affirmatively professed the religion of Islam at the material time. 'Absent of such proof, the case may be classified as an ab initio case'. Such cases are determined by the civil courts for otherwise there will be no*

legal recourse for persons of this category – see para [99]. See also Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal [2020] 10 CLJ 748; [2021] 1 MLJ 120; [2021] 1 MLRA 286.

[273] *The Federal Court in Rosliza then examined the factual matrix to determine whether the plaintiff is, on the evidence, a Muslim to begin with. If the plaintiff was a Muslim of original faith, then the matter will befall on the Syariah Courts as the civil courts will have no jurisdiction to grant the reliefs sought as they would relate to renunciation, to some extent. Having examined the factual matrix, the Federal Court concluded that the plaintiff was not a Muslim and accordingly, granted the declaration sought, namely that she is not a person professing the religion of Islam.*

[274] *These two landmark decisions thus have determined that the civil courts of which this court forms the apex court have always had jurisdiction over all persons, regardless their religion. …*

(emphasis added)

[102] Premised on:

(i) the two judgments delivered by *Rosliza*; and

(ii) the three judgments (two majority and one dissenting judgment) in *Dahlia Dhaima:*

- only the civil courts (not the Syariah Courts) have exclusive jurisdiction under art. 121(1) of the FC to decide on the constitutional law question. Consequently, previous cases, including those decided by our apex courts in the Supreme Court and Federal Court, should be read with caution and cannot be applied if such judgments are inconsistent with *Rosliza* and *Dahlia Dhaima*.

[103] With respect, the learned High Court Judge had committed an error of law in this case when:

(ii) the High Court did not apply *Rosliza*. It is to be noted that the Federal Court's judgment in *Dahlia Dhaima* was delivered after the preparation of the learned High Court Judge's GOJ; and

(ii) the learned High Court Judge did not decide that only the civil courts (not the Syariah Courts), can determine the constitutional law question.

What Is The Effect Of Pahang State Fatwa (12 September 2013)?

[104] Firstly, the Pahang State Fatwa (12 September 2013) cannot apply retrospectively to decide on the constitutional law question, namely, whether the appellant was a Muslim from the date of her birth on 27 November 1993.

[105] Secondly, Tengku Maimun CJ had decided in *Rosliza*, at [35] and [37], as follows:

A [35] *Firstly, this court will have to ascertain on whom the burden of proof lies in respect of the plaintiff's claim that she is an illegitimate child. Secondly, this court must thereafter re-evaluate the evidence on record to ascertain whether the plaintiff's claim is made out.*

...

B [37] *Applying ss 101 and 102 of the Evidence Act 1950 and s 41 of the Specific Relief Act 1950 squarely to this case, as it is the plaintiff who seeks to establish that she is illegitimate, she fails if she cannot prove evidence to that effect.*

(emphasis added)

Based on the above judgment of Tengku Maimun CJ in *Rosliza*, the appellant C had the legal and evidential burden (legal/evidential burden) under ss. 101(1), (2) and 102 of the Evidence Act 1950 (EA) to prove on a balance of probabilities that she is an illegitimate child. It is clear that the appellant had the legal/evidential burden to adduce proof on a balance of probabilities that she was not a Muslim *ab initio*.

D Reproduced below are ss. 101(1), (2) and 102 of the EA:

Burden of proof

101(1) *Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.*

E (2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

On whom burden of proof lies

102 *The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

F (emphasis added)

[106] Premised on *Rosliza*, the constitutional law question can only be decided on whether the appellant had discharged the legal/evidential burden to prove on a balance of probabilities that she was not a Muslim from the G beginning. In other words, the Pahang State Fatwa (12 September 2013) cannot be relied on to decide the constitutional law question in this case.

[107] Thirdly, the learned High Court Judge in this case relied on the judgment of Azahar Mohamed CJ (Malaya) in *Rosliza*, to justify the High Court's application of the Pahang State Fatwa (12 September 2013). In H *Rosliza*, at [131], Azahar Mohamed CJ (Malaya) decided as follows:

[131] *I have had the benefit of reading the learned Chief Justice's judgment in draft. Having considered the reasons given by the learned Chief Justice, I agree that question one is answered in the affirmative and question two is answered in the negative. However, I respectfully consider that before granting the relevant remedies the* I *appellant sought, we should first request for the opinion of the Fatwa Committee of the State of Selangor pursuant to s. 53 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 ('the 2003 Enactment') pertaining to the question on Hukum Syarak ('Islamic law'), namely whether or not the appellant*

was a Muslim at the time of birth. Before turning to the discussion on this matter, I would also like to express my own views and add the following reasons why question one should be answered in the affirmative.

(emphasis added)

It is to be noted that the above view in *Rosliza* regarding the opinion of the State Fatwa Committee by Azahar Mohamed CJ (Malaya), was concurred only by Hasnah Mohamed Hashim FCJ (as she then was) in that case. The above *dictum* by Azahar Mohamed CJ (Malaya) was not shared by the other seven members of the Federal Court in *Rosliza*. Hence, such a *dictum* was purely *obiter* and the *ratio decidendi* of the Federal Court's judgment in *Rosliza* is expounded in the judgment of Tengku Maimun CJ (which did not rely on the State Fatwa Committee's view).

[108] Fourthly, in this case, the learned High Court Judge had applied the Pahang State Fatwa (12 September 2013) based on the 4-3 majority judgment of Federal Court in *Jabatan Pendaftaran Negara & Ors v. Seorang Kanak-kanak & Ors; Majlis Agama Islam Negeri Johor (Intervener)* [2020] 4 CLJ 731 (*Jabatan Pendaftaran Negara*'s case).

The following two questions of law were decided in *Jabatan Pendaftaran Negara*'s case, at [1]:

[1] *This appeal raises the issue of whether the Director General of National Registration ('DGNR') possess the authority, under the Births and Deaths Registration Act 1957 ('the BDRA') to ascribe 'bin Abdullah' instead of the biological father to the name of an illegitimate Muslim child in registering the birth of that child. Related to this issue is whether the DGNR in doing so was correct in giving consideration to the personal law of a Muslim person.*

(emphasis added)

It is clear that *Jabatan Pendaftaran Negara*'s case did not concern the constitutional law question. Consequently, the High Court had erred in law by relying on *Jabatan Pendaftaran Negara*'s case to apply the Pahang State Fatwa (12 September 2013) in this case.

[109] Lastly, art. 4(1) of the FC provides for the supremacy of the FC – please refer to the judgment of Suffian LP (sitting alone) in the Federal Court case of *Ah Thian v. Government Of Malaysia* [1976] CLJU 3; [1976] 1 LNS 3; [1976] 2 MLJ 112, at 113. art. 4(1) of the FC states as follows:

Supreme law of the Federation

4(1) *This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.*

(emphasis added)

In view of the supremacy of the FC, the Pahang State Fatwa (12 September 2013) cannot oust the civil court's exclusive jurisdiction to decide on the constitutional law question under art. 121(1) of the FC.

Whether The Appellant Had Proven On A Balance Of Probabilities That She Was Not A Muslim From The Beginning

[110] In this case, the appellant's IC stated that she was a Muslim. The effect of such a statement in the appellant's IC, had been decided by Tengku Maimun CJ in *Rosliza*, at [30], as follows:

> [30] It follows that I agree and adopt the following observations of Dr Badariah JCA in *Ketua Pegawai Penguatkuasa Agama & Ors v. Maqsood Ahmad & Ors And Another Appeal* [2021] 1 MLJ 120 ('*Maqsood*'):
>
> > [136] *... we are of the view a MyKad is not conclusive evidence of religious identity. Just because a MyKad states 'Islam' does not ipso facto mean that the given person is to be taken as a person 'professing the religion of Islam'. Firstly, our reading of Lina Joy suggests that the Federal Court, strictly considering administrative law, held that the NRD was not incorrect to require an order from the Syariah Courts before removing the word 'Islam' from the applicant's MyKad. The Federal Court did not venture to say that a MyKad was in fact conclusive of her status as a person 'professing the religion of Islam'. We are fortified in our view by comparing the decision in Lina Joy to the decision in Azmi.*
>
> > [137] *But for the sake of caution, we hasten to add that if a person's MyKad clearly does not state that he or she is a Muslim, given the unique circumstances adjudicated in Lina Joy, there would be no reason to investigate such a person for a Syariah offence because it is clear that he or she is not a Muslim. However, if his/her MyKad says he/she is 'Islam', then that is where the ambiguity lies, because the religious identity as stated in the MyKad is not conclusive proof of what is stated if that fact is disputed. Thus, any person alleging a fact in the MyKad to be true still bears the burden of proving its truth.*
>
> (emphasis added)

It is clear from the above judgment that the respondents cannot rely on the statement in the appellant's IC that the appellant was a Muslim. Furthermore, the evidence from the appellant's mother (as stated in sub-para. 47(1)(d) (below) had rebutted the fact that the appellant's mother had converted the appellant to Islam at the time of the issuance of the appellant's IC.

[111] I am constrained to decide that the learned High Court Judge had committed a plain error of fact in not deciding that the appellant had proven on a balance of probabilities that she was not a Muslim *ab initio*. I rely on the following evidence:

(i) in support of this OS, the appellant's mother affirmed two affidavits on 14 July 2022 and 12 October 2022 (two affidavits (appellant's mother). According to the two affidavits (appellant's mother), among others:

(a) since the appellant was born on 27 November 1993:

(1) the appellant has professed and practised Jakun's customs/ spiritual beliefs; and

(2) the appellant has not converted to Islam;

(b) to marry En Sulaiman, the appellant's mother converted to Islam around 14 November 1995 (when the appellant was a minor). When the appellant's mother converted to Islam, she did not convert the appellant to Islam. In fact, when the appellant was a child, the appellant's mother did not give her consent for the appellant's conversion to Islam;

(c) when the appellant was a minor, Encik Sulaiman did not convert her to Islam;

(d) the appellant's IC stated that the appellant was a Muslim because:

(1) when the appellant was 13 years old, the appellant's mother went to NRD's office where she was informed by an officer in the NRD (NRD officer) that since the appellant's mother was a Muslim, the IC should state that the appellant was a Muslim; and

(2) the appellant's mother did not know the legal position and followed the above "advice" of the NRD officer because the appellant's IC was needed for the appellant to be registered in a Government school. Hence, the appellant's mother gave a Muslim name, "Siti Nur Ain", to the appellant and this name was stated in the appellant's IC; and

(e) the appellant's mother did not consent or cause the entry to be made in Pahang's Muallaf Register (which stated that the appellant was a Muslim);

(ii) the respondents had not adduced any evidence to disprove the truth of the above contents of the two affidavits (appellant's mother);

(iii) the appellant had affirmed two affidavits on 14 July 2022 and 12 October 2022 (appellant's two affidavits) to support this OS. No evidence had been adduced by the respondents to prove that the contents of the appellant's two affidavits were not true;

(iv) since the appellant's birth, she has professed and practised Jakun's customs/spiritual beliefs. In fact, the appellant resides in the village which is inhabited by the Jakun tribe which practises Jakun's customs/spiritual beliefs;

(v) the appellant has not converted to Islam at any time;

(vi) the marriage was not solemnised in accordance with Islam. The appellant's husband is an Orang Asli who professes and practises Jakun's customs/spiritual beliefs;

(vii) since the marriage, both the appellant and the appellant's husband have professed and practised Jakun's customs/spiritual beliefs;

(viii) the birth certificate (appellant's first child) and birth certificate (appellant's second child) stated "tiada agama" (co religion) for the appellant, the appellant's husband, the appellant's first child and the appellant's second child;

(ix) the appellant's three children were brought up in accordance with Jakun's customs/spiritual beliefs;

(x) no evidence had been adduced by the respondent to prove that the appellant had converted to Islam;

(xi) JKOA's letter which confirmed that the appellant was not a Muslim. Notably, the appellant and the appellant's husband refused to return JKOA's letter to JKOA;

(xii) upon the advice of Encik Khamis from JKOA, the appellant affirmed a SD pursuant to the Statutory Declarations Act 1960 (which stated that the appellant was not a Muslim);

(xiii) the appellant and the appellant's husband refused to accede to the request by NRD to return the birth certificate (appellant's first child) so that the religious status of the appellant's first child could be recorded as a Muslim;

(xiv) the appellant and the appellant's husband did not apply for a birth certificate for the appellant's third child for fear that the appellant's third child would be forcibly considered a Muslim; and

(xv) the conduct of the appellant, the appellant's mother and the appellant's husband in going to PAI, NRD, JKOA and the first respondent's office (to confirm the fact that the appellant was not a Muslim *ab initio*).

[112] In view of the preponderance of evidence as stated in the above para. 47, I am not able to attach any weight to Pahang's Muallaf Register and the first respondent's letter (16 July 2018).

What Is The Effect Of AILE, Amendment Enactment (A82) And IFLE *Vis-à-Vis* Article 12(4) Of The FC?

[113] Article 12(4) of the FC provides as follows:

> **Rights in respect of education**
>
> 12(1) …
>
> …
>
> (3) *No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.*
>
> (4) *For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.*
>
> (emphasis added)

[114] Our Federal Court had decided in the following two cases that the singular term "parent" in art. 12(4) of the FC means both parents:

(i) in *Indira Gandhi*, at [149] to [153], [163], [164] and [172], Zainun Ali FCJ had delivered the following judgment:

> [149] *The pertinent provision in the Eleventh Schedule, read together with art. 160(1), provides that in interpreting the [FC]:*
>
> > *Construction of singular or plural – words in the singular include the plural, and words in the plural include to singular.*
>
> [150] *Applying the guide to interpretation to art. 12(4), the position is fairly clear: the singular word 'parent' includes the plural 'parents'. The religion of the minor child is to be decided by his 'parent' or 'parents' as the case may be.*
>
> [151] *However, the formulation in art. 12(4) is differently worded in the national language translation of the Federal Constitution, which reads as follows:*
>
> > (4) *Bagi maksud Fasal (3) agama seseorang yang di bawah umur lapan belas tahun hendaklah ditetapkan oleh ibu atau bapanya atau penjaganya.*
>
> [152] The phrase 'ibu atau bapa' or 'his father or mother' denotes a parent in the singular, and appears to preclude an interpretation requiring the religion to be determined by both father and mother. In light of the apparent inconsistency between the Bahasa Malaysia and English version of art. 12(4), it was contended that the former is authoritative and prevails over the latter pursuant to art. 160B of the Constitution. Article 160B states:
>
> > 160B Authoritative text
> >
> > Where this Constitution has been translated into the national language, the Yang di-Pertuan Agong may prescribe such national language text to be authoritative, and thereafter if there is any conflict or disagreeing between such national language text and the English language text of this Constitution, the national language text shall prevail over the English language text.

A [153] *The High Court held that since the requisite prescription of the national language version under art. 160B above has not been effected, the authoritative or official text is the English version. The learned JC observed that the senior federal counsel had not submitted otherwise. In the present appeals, despite the learned state legal adviser's reliance on art. 160B, no evidence of the necessary prescription was adduced by either of the respondents. In the circumstances, we*
B *will proceed on the basis that the English version to be authoritative.*

…

[163] *What can be discerned from the above is that, the law has come a long way from the days when one parent's claim could be considered superior to the other. Where the child's religion or religious upbringing is in issue, the paramount*
C *consideration for the court is to safeguard the welfare of the child, having regard to all the circumstances of the case. In so doing the court does not pass judgment on the tenets of either parent's belief. Conversion to another religion is a momentous decision affecting the life of a child, imposing on him a new and different set of personal laws. Where a decision of such significance as the*
D *conversion of a child is made, it is undoubtedly in the best interests of the child that the consent of both parents must be sought. The contrary approach of allowing the child to be converted on the consent of only one parent would give rise to practical conundrums. The learned JC has described one such milieu* (at para [35]):

E > *If by 'parent' is meant either parent then we would have a situation where one day the converted parent converts the child to his religion and the next day the other parent realising this would convert the child back to her religion. The same can then be repeated ad nauseam.*

[164] *Such a scenario would undoubtedly be detrimental to the welfare of the child. Since a literal construction of art. 12(4) would give rise to consequences*
F *which the legislative could not possibly have intended, the article should not be construed literally (Sukma Darmawan at p. 247). A purposive reading of art. 12(4) that promotes the welfare of the child and is consistent with good sense would require the consent of both parents (if both are living) for the conversion of a minor child.*

G …

[172] *It is noted that in translating art. 12(4) [FC], it would appear that the real essence of the English version is eluded. It is literally a case of being lost in translation. The reason 'parent' is used in art. 12(4) is to provide for a situation where indeed there is only one parent of the child – eg, a single parent*
H *situation. But where both parents exist, then the Eleventh Schedule shall be relied upon.*

(emphasis added)

(ii) the above judgment in *Indira Gandhi* had been affirmed by Tengku Maimun CJ in *Rosliza*, at [67] to [69], as follows:

I *[67] The facts of the case for purposes of the present discussion are shortly these. The father of non-Muslim children purported to convert his minor children to the religion of Islam without the knowledge of their mother. The question before this*

court was whether consent of only one parent is sufficient to effect the conversion. The provision in question in that case was s 106 of the Administration of the Religion of Islam (Perak) Enactment 2004 which provides:

> *For the purpose of this Part, a person who is not a Muslim may convert to the religion of Islam if he is of mind and:*
>
> (a) has attained the age of eighteen years; or
>
> (b) *if he has not attained the age of eighteen years, his parent or guardian consents in writing to his conversion.*
>
> [68] *In the interpretation of the above provision, this court was mindful of art. 12(4) of the FC where it construed the singular word 'parent' to mean both parents. Accordingly, it was held that a single parent had no right in law to convert his minor children to another religion without the benefit of consent of the other parent. Zainun Ali FCJ observed as follows [in Indira Gandhi]:*
>
> ...
>
> [69] *It is therefore clear that where even if Ibrahim had the secular paternal right to decide the plaintiff's religion, the right is not his to exercise alone. There is no evidence that Yap Ah Mooi jointly consented to recognise the plaintiff as a Muslim. Indeed, the evidence points in the opposite direction in that in the plaintiff's birth certificate, the column for her religion reads: 'Maklumat Tidak Diperolehi' (Information Not Obtained).*
>
> (emphasis added)

[115] It is clear from *Indira Gandhi* and *Rosliza* (please refer to the above para. 50) that by virtue of art. 12(4) of the FC, only both parents of a child can convert their child.

[116] According to art. 4(1) of the FC, any "law passed after Merdeka Day which is inconsistent with (the FC) shall, to the extent of the inconsistency, be void". The term "law" is defined in art. 160(2) of the FC as including "written law". According to art. 160(2) of the FC, "written law" includes the FC and the Constitution of any State (State Constitution).

[117] I will refer to the definition of "written law" in s. 3 of the Interpretation Acts 1948 and 1967 as follows:

> "written law" means:
>
> (a) the [FC] and the [State Constitutions] and subsidiary legislation made thereunder;
>
> (b) Acts of Parliament and subsidiary legislation made thereunder;
>
> (c) Ordinances and **Enactments (including any** federal or **State law styling itself an** Ordinance or **Enactment) and subsidiary legislation made thereunder**; and

A (d) any other legislative enactments or legislative instruments (including Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland and Orders in Council and other subsidiary legislation made thereunder) which are in force in Malaysia or any part thereof;

(emphasis added)

B **[118]** By virtue of art. 4(1) of the FC, if:

(i) any State Enactment; and

(ii) any subsidiary legislation made pursuant to State Enactment (State Subsidiary Legislation)

C - is inconsistent with any provision in the FC, the State Enactment and State Subsidiary Legislation, "shall" be void to the extent of the inconsistency with the provision in the FC. Consequently, if:

(1) paragraphs (b) and (d) of the definition of a "Muslim" in D s. 2(1) read with s. 103 of the AILE;

(2) Amendment Enactment (A82) (which introduced ss. 111E and 111H AILE); and

(3) s. 86 IFLE

E allows one parent to convert unilaterally his or her child to Islam, such provisions are void to the extent of their inconsistency with art. 12(4) of the FC (as interpreted by our apex court in *Indira Gandhi* and *Rosliza* – please refer to the above para. 50).

F **[119]** I reproduce below paras. (b) and (d) of the definition of the term "orang Islam" (Muslim) in s. 2(1) of the AILE (in Malay):

"orang Islam" ertinya:

...

G (b) *seseorang yang sama ada kedua-dua ibu bapa atau salah seorang daripadanya pada masa kelahiran orang itu adalah seorang Islam;*

...

(d) *seseorang yang telah memeluk agama Islam menurut seksyen 101 atau menurut kuasa seksyen 102 dan 103;*

H ...

(emphasis added)

[120] Paragraph (b) of the definition of the term "orang Islam" (Muslim) in s. 2(1) of the AILE is similar to the definition of "Muslim" in s. 2(b) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 I (ARIE (Selangor)). In *Rosliza*, at [48], [49], [59] to [66] and [70], Tengku Maimun CJ had delivered the following judgment regarding the definition of "Muslim" in s. 2(b) of the ARIE (Selangor):

Whether Yap Ah Mooi is a Muslim or a Malay

[48] *The next question is whether Yap Ah Mooi is a Muslim. The issue whether this court has jurisdiction to make that assessment is addressed in greater detail when I deal with question one. In relation to question two, the issue of Yap Ah Mooi's religion is only relevant to the assessment whether the plaintiff is also rendered a Muslim by virtue of the ARIE 2003 [Administration of the Religion of Islam (State of Selangor) Enactment 2003].*

[49] *Section 2(b) of the ARIE 2003 defines 'Muslim' as follows:*

> *'Muslim' means:*
>
> …
>
> (b) *a person either or both of whose parents were at the time of the person's birth, a Muslim.*
>
> ...

[59] *Given all the evidence on record, and without making a definitive finding as to Ibrahim's actual or real identity, the totality of the plaintiff's evidence is certainly more consistent and more worthy of credit. On a balance of probabilities, the facts and circumstances seem to suggest that Yap Ah Mooi was neither a Muslim nor a Malay.*

[60] *As there is no evidence that Yap Ah Mooi was a Muslim (and certainly not a Malay) at the time of the plaintiff's birth, it cannot be said that the plaintiff is legally a person professing the religion of Islam simply by virtue of the fact that both her parents were Muslims at the time of her birth.*

[61] *Having established that, it is to be noted that the way the High Court and Court of Appeal approached the issue was by essentially relying on the word 'either' in s. 2(b) of the ARIE 2003. They found that because there was a valid marriage between Ibrahim and Yap Ah Mooi, the plaintiff is a legitimate child and she accordingly inherits her father's religious identity. The High Court for example, used the word 'dinasabkan' (see para 9, High Court judgment).*

[62] *The question which arises here is whether the plaintiff is a Muslim by virtue of the fact that 'either' one of her parents, more specifically, her father, is a Muslim. Further, does the plaintiff's status as an illegitimate child affect the ascription of her father's religion to the plaintiff?*

[63] Section 111 of the Islamic Family Law (State of Selangor) Enactment 2003 ('the IFLE 2003') provides as follows:

> Where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage or within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, and the woman not having remarried, the nasab or paternity of the child is established in the man, but the man may, by way of *li'an* or imprecation, disavow or disclaim the child before the Court.

A [64] *Under s. 111 [IFLE 2003], which relates to the ascription of paternity, a child may only be ascribed the paternity of the father if he or she is born to a woman who is married to the man for a period of more than six qamariah months. And the father may only disavow or disclaim paternity under the provisions of that section. It follows that a child born less than six qamariah months or born to a woman not married to the man who fathered the child is*
B *illegitimate and the nasab or paternity of the child could not be established in the father. A simple application of the section to the facts of the instant case results in the conclusion that the plaintiff is an illegitimate child and while her status as a Muslim is disputed, it remains undisputed that Ibrahim is a Muslim. And as a Muslim, the said s. 111 applies to Ibrahim to remove him, in law, of any*
C *ascription of paternity to the plaintiff.*

[65] *The necessary implication upon a holistic construction of the IFLE 2003 against s. 2 of the ARIE 2003 therefore suggests that 'parents', in s. 2 of the ARIE 2003, refers only to the parents of legitimate children. Reason being, if s 111 of the IFLE 2003 not only renders a child illegitimate but also bars the ascription of paternity to the said child, then it stands to reason that the putative*
D *father cannot, in law, be considered the child's father. This is the first reason why the plaintiff cannot be considered a Muslim simply by virtue of s. 2(b) of the ARIE 2003.*

[66] *For completeness, the other question warranting an answer is this. Even if under Islamic law or the IFLE 2003 Ibrahim cannot ascribe paternity to the*
E *plaintiff, could he nonetheless, under secular law, have the right to decide his then infant daughter's religion as he did for her in 1994 in her written application for an identity card? The short answer is no. The authority for this is the judgment of this court in Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 1 MLJ 545 ('Indira Gandhi').*

F …

[70] *In conclusion, the following issues in respect of question two are clear. Firstly, the plaintiff is an illegitimate child. There is no proof of marriage of her parents at the time she was born. The plaintiff cannot be deemed a Muslim simply by virtue of s. 2(b) of the ARIE 2003 on the premise that 'either' or 'both' of her*
G *parents are Muslim. For the reasons aforementioned, although Ibrahim had stated certain particulars in his application for an identity card on behalf of the plaintiff or even in his own application for a new identity card, those particulars are not proof. Even if they are, they appear to materially conflict with the evidence on record.*

(emphasis added)

H Premised on the above judgment in *Rosliza*, the respondents cannot rely on the definition of the term "orang Islam" (Muslim) in s. 2(1)(b) of the AILE, to resist this appeal.

I

[121] Sections 103 and 106(3) of the AILE state as follows (in Malay):

s 103 *Status anak-anak muallaf*

Jika pada saat dia memeluk agama Islam, seseorang muallaf sama ada lelaki atau perempuan, ada mempunyai anak yang belum mencapai umur lapan belas tahun, dan anak itu telah diperintahkan oleh mahkamah, selain daripada Mahkamah Syariah, supaya diletakkan di bawah penjagaan muallaf itu, dan muallaf itu menetapkan supaya anak itu memeluk agama Islam, maka anak tersebut adalah memeluk agama Islam pada masa penjagaan diberi.

s 106 *Pendaftaran pemelukan agama Islam*

...

(3) *Jika Pendaftar Muallaf berpuas hati bahawa seseorang muallaf telah diberi penjagaan di bawah seksyen 103 terhadap anak yang pada saat pemelukan muallaf itu ke agama Islam adalah berumur kurang daripada lapan belas tahun, Pendaftar Muallaf hendaklah atas permohonan muallaf tersebut mencatatkan juga pemelukan ke agama Islam anak itu dalam Daftar Muallaf.*

(emphasis added)

Section 103 of the AILE only applies if the civil court (not Syariah Court) grants a custody order of a child in favour of a "muallaf" (Muslim convert). In this case, the civil court had not granted to the appellant's mother a custody order with regard to the appellant (as a child). Accordingly, there cannot be any room to invoke ss. 103 and 106(3) of the AILE in this case.

[122] I have not overlooked s. 86 of the IFLE which provides as follows (in Malay):

s 86 *Penjagaan anak-anak tak sahtaraf*

Penjagaan kanak-kanak tak sahtaraf adalah semata-mata pada ibu dan saudara mara ibu.

(emphasis added)

With respect, s. 86 of the IFLE does not concern the religion of an illegitimate child. Alternatively, if:

(i) section 86 IFLE allows the mother who has converted to Islam, to have the custody of the child; and

(ii) the mother has the right to convert unilaterally the child

- such an interpretation of s. 86 of the IFLE is inconsistent with art. 12(4) of the FC (as interpreted by our apex court in *Indira Gandhi* and *Rosliza*). In such an event, s. 86 of the IFLE shall be void to the extent of its inconsistency with art. 12(4) of the FC – please refer to the above para. 54.

A **[123]** It is to be noted that the Amendment Enactment (A82) was only gazetted on 11 February 2021. Hence, the Amendment Enactment (A82) cannot apply retrospectively in this case.

Can The Appellant Practise Freely Jakun's Customs/Spiritual Beliefs?

B **[124]** Article 11(1) of the FC states as follows:

> **Article 11 Freedom of religion**
>
> (1) **Every person has the right to profess and practise his religion** and, subject to Clause (4), to propagate it.
>
> (emphasis added)

C **[125]** As the appellant had discharged the legal/evidential burden to prove on a balance of probabilities that she is not a Muslim from the beginning (please refer to the above para. 47), by virtue of art. 11(1) of the FC, she has the freedom to practise Jakun's customs/spiritual beliefs without any interference from the respondents.

D **Conclusion**

[126] In view of the above evidence and reasons, I am constrained to allow this appeal and grant an order in terms of prayers 1 to 3 OS. Due to the public importance of this appeal, there will be no order as to costs.

E

F

G

H

I